The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page iii.

VOL. LXXV. **Saturday, January 31, 1931.** No. 5

Current Topics.

The Privy Council.

AT ONE time the Judicial Committee of the Privy Council was a good deal criticised for the scratch character of its composition. Not infrequently the services of the Lord President, although not a trained lawyer, had to be requisitioned in order to form a quorum; on one occasion the DUKE OF BUCCLEUCH had in this capacity to sit for three or four days to listen to arguments in an appeal from India respecting the construction of a will, and he frankly admitted that he did not enjoy the experience. No injustice, we may be sure, was done, but it was scarcely fitting that a layman should have to preside at the hearing of an appeal involving highly technical points of Indian law. Happily, that sort of thing is not possible in these days in the Judicial Committee. Now, and for some years past, every effort has been made to ensure the presence of a full bench, each member of which has had a ripe experience of the various questions which are involved in the appeals. As we all know, however, there has been in some parts of the Empire a desire manifested on the part of sections of the community to abolish altogether the right of appeal to the Privy Council. It would, indeed, be regrettable if this, which the late Lord ROSEBERY termed the golden link of empire, were to be broken, and it is satisfactory to find that the desire for this is by no means held universally. Only last week a deputation waited upon Mr. BENNETT, the Prime Minister of Canada, and urged him to secure the abolition of the right of appeal. His reply was significant; it was this, that the right of appeal was not a restriction but a privilege which should be valued. In Canada, perhaps more than in any of the other Dominions, the benefit of access to a court of appeal removed from local considerations has been appreciated, owing especially to the fact of the existence of two populations with completely different traditions and different laws—the English-Canadians and the French-Canadians, each naturally inclined to regard matters in dispute between them from their own point of view. Again, disputes between the Provinces *inter se*, or between a Province and the Dominion Government, have found in the Privy Council an appellate tribunal eminently equipped for their solution, as being wholly removed from any possibility of local prejudice. But good though the tribunal is, and great though the work it has accomplished has been, we hope that the day is not far off when a greater appellate tribunal will be set on foot, a tribunal for the whole Empire, recruited from each of its constituent parts and thus still better qualified to grapple effectively with the multitudinous questions that may emerge for its decision. Fifty or more years ago, WALTER BAGEHOT pleaded for such an imperial court, and in recent times the late Lord HALDANE strongly favoured the suggestion, but the constitutional and legal mills work slowly; let us hope that they in this matter may work surely.

Australian Legal Changes.

LAST WEEK two notable changes in the governmental and legal worlds of Australia were carried out, each of particular interest to members of the profession. First, Sir ISAAC ISAACS, who for several years had filled the office of Chief Justice of the High Court of Australia, exchanged that post for that of the Governor-General, he being thus the first Australian to be nominated for this exalted office. On Thursday of last week he was sworn in with the customary ceremony, the oath of office being administered by Sir FRANK GAVAN DUFFY, the senior judge of the High Court. Next day came the news that Sir FRANK had been appointed to succeed Sir ISAAC ISAACS as Chief Justice. No happier selection, we feel sure, could have been made. A son of Sir CHARLES GAVAN DUFFY, whose name is writ large in the story of Ireland's struggles against "Saxon tyranny," and who achieved fresh distinction in Australia to which he emigrated in 1856, becoming eventually Prime Minister of Victoria, the new Chief Justice, after a successful career at the bar, and being for a time editor of the Victorian Law Reports, was appointed to the bench in 1913, so that he brings to his new duties a rich experience of legal work.

Stamping out Blackmail.

TWO LONG sentences of penal servitude were recently passed by the Recorder, Sir ERNEST WILD, K.C., on blackmailers—one of ten years on a man who, during the course of a year, had bled a clergyman, of small means, to the extent of about £100; and the other of seven years on a labourer who had sent letters demanding money with menaces to a young married woman. After imposing the longer sentence the Recorder said that the judges of this land had determined—and the Court of Criminal Appeal had strengthened their hands—to stamp out the crime of blackmail. No one will dispute that blackmail, moral murder as it has so often been called, is one of the most objectionable, degrading offences that a so-called civilised human being can commit. Its effect is at least twofold. It rapidly increases the avarice of the blackmailer, who, usually beginning in a small way, eventually generally cuts his own throat by increasing his demands until they become outrageously excessive and unpayable by his dupe. Secondly, the victim suffers an agony of doubt and dread, often over a long period, until the continued fear of exposure or impending financial ruin either make him a nervous wreck or drive him to defy his tormentor. Further, no one will deny that for a morally guilty person to withstand the initial demands of a skilful blackmailer a considerable degree of courage is required, and, as Lord READING, C.J.,

said, in *R.* v. *Dymond*, 64 Sol. J. 571 : [1920] 2 K.B. 260, "prosecutions for blackmail are, taking the known facts into consideration, scanty enough." The comparatively recent sanctioning of the suppression of the prosecutor's name has done much towards bringing more and more blackmailers to justice, but even under present conditions the natural fear of appearing in open court keeps many other victims away, and so, in some measure, encourages the crime. If only authority were conferred to deal with these cases in camera, blackmail would be practically stamped out in a very short time, particularly if the general public were more widely informed that the maximum punishment is penal servitude for life, and that seven or ten years was the customary term passed.

The Institute of Taxation.

It must be almost unique for a professional organisation to be launched with the strict condition that membership is available only to those who are qualified by examination *and* practical experience and without the bait of titles and designatory letters which are so cheap in these days. The Institute of Taxation, particulars of which we gave recently, has been instituted on these lines, and solicitors and accountants who specialise in taxation matters will probably find that the facilities offered by the Institute will prove invaluable. The council, of which Mr. Ronald Staples is chairman, includes many names well known in legal and accountancy circles, and, confined to its own limits, the organisation should do much to bring about a better understanding of one of the most complex questions which claim the attention of professional men. Until the rate of income-tax rose above about a shilling, the public did not seem to take it very seriously, but to-day, with its crippling effect upon industry, it is necessary that special attention should be given to the law and practice relating to it. We do not know what will be the attitude of the Institute of Taxation to the officials, but, with the well-informed opinion which should ultimately be marshalled under its banner, we should imagine that any representations it makes regarding anomalies will not lightly be cast aside by the powers that be. Such an organisation, too, should help the public to distinguish between the quack and the qualified practitioner, for we understand that the strictest watch is to be kept on the professional conduct of the members

An Innkeeper and his Guest's Car.

The case of *Winkworth* v. *Raven*, *The Times*, 24th January, is of considerable importance to innkeepers and hotel proprietors, a large class, and their guests who tour in their own cars, an even larger one. The facts were simple. The plaintiff, staying in the defendant's hotel, had left his car in the garage, which was open in front. The night was bitterly cold, and the car was damaged by reason of the water freezing in the radiator. The plaintiff sued the defendant in the local county court and recovered damages, the learned judge holding that he was entitled to have his car protected satisfactorily from frost, and had himself been guilty of no negligence. The Divisional Court has now reversed this judgment, holding that, although an innkeeper insures his guest against loss of his goods, he does not do so against injury, and, negligence not having been proved against him or his servants, the defendant as innkeeper was not liable for the damage to the car. It is understood that there will be an appeal to the Court of Appeal, and doubt may respectfully be expressed as to whether the above decision can stand. Several cases were cited in his judgment by Swift, J. That of *Maclenan* v. *Segar* [1917] 2 K.B. 325, before MacCardie, J., was a claim for personal injury, so a pronouncement as to injury to goods in it might be regarded as dictum. In fact, however, the learned judge stated that the liability of an innkeeper in respect of goods was that of an insurer, subject to certain well-known limitations. In *Morgan* v. *Ravey* (1861), 6 H. & N. 265, the relevant passage in the judgment of Pollock, C.B., is perhaps ambiguous, but the easier interpretation appears to be the reverse of that preferred by Swift, J., namely, that "we think that is the law" applies to the immediately preceding sentence "the defendants would be liable though not only not negligent but even diligent." If *Dawson* v. *Chamney* (1843) 5 Q.B. 164, was against this view, it was also against the current of authority. And if it is true that in no case has an innkeeper been held responsible for damage to goods unless negligence has been proved, it appears to be equally true that the converse proposition has not hitherto been laid down. In the circumstances, surely the Innkeepers Act, 1863, is in point, though it was not mentioned in the judgments. This was an Act "to amend the law concerning the liability of innkeepers in respect of the goods of their guests" and declared that "no innkeeper shall . . . be liable to make good to any guest any loss of *or injury to* goods or property brought to his inn"—save in the circumstances thereinafter appearing. One such circumstance was his own or his servant's negligence, from which the deduction may be made that, before the Act, he was liable for the injury to the goods of his guest even without such negligence, and therefore remains liable, unless the statute protects him. In this particular case, however, it might be that the guest was himself negligent in failing to draw the water from his car, when it was placed in a garage exposed to the air.

Proxies and Personal Votes.

Two important questions relative to voting by proxy at company meetings were discussed in *Cousins* v. *International Brick Coy. Ltd.*, 47 T.L.R. 93; affirmed *The Times*, 13th January, 1931. Can a shareholder withdraw a proxy by notice given subsequent to the date upon which the resolution was put but prior to the date of a second meeting held for the purpose of a poll? And is he entitled, notwithstanding the proxy, to vote in person at the second meeting? The first question was decided in the negative upon the authority of *Spiller* v. *Mayo* (*Rhodesia*) *Development Coy.* (1908), *Ltd.* [1926] W.N. 78, where it was held, "well settled that the taking of a poll was not a meeting of the company in the strict sense, but was in law a mere continuation of the meeting at which the poll was directed to be taken." In the present case the proxy had admittedly not been withdrawn prior to the first meeting within the time prescribed by the articles of the company. The votes cast by proxies were consequently held to be valid. On the second point Mr. Justice Luxmoore held that shareholders were entitled to vote personally: that the company was bound to accept such votes notwithstanding that they were contrary in tenor to validly given proxies. The shareholder was in a position to withdraw the agency of the proxy at any time and by voting personally, he in effect did so. This view was upheld by the Court of Appeal. Section 20 of the Companies Act, 1929, which provides that the memorandum and articles "shall . . . bind the company and the members as if they respectively had been signed and sealed by each member," and the articles themselves rendered the system of voting prescribed by the latter "a matter of contract between the shareholder and the company" —per Lord Hanworth, M.R., *The Times*, *supra*. In fact voting might be by proxy or in person. But shareholders who had given proxies were not on that account disqualified from adopting the alternative method of attending the meeting and exercising their right to vote in person. Thus it appears that shareholders who have failed to comply with the provisions of their company's articles in withdrawing proxies, may yet go behind them and cast votes contrary to the tenor of the proxies which have been given. Of course the foregoing decision is based upon the particular articles being construed, and its generality is limited to cases where articles are drawn in similar, or substantially similar, terms.

Avoidance of Voluntary Gifts.

It was at one time considered a moot point whether or not a *bonâ fide* voluntary conveyance of *land* to a charity could be avoided by a subsequent sale for value under the statute of 27 Eliz. c. 4.

The ground for this uncertainty appears to have been the decision of the House of Lords in the case of *Attorney-General* v. *Corporation of Newcastle* (12 C. & F. 402; 3 Beavan 307), which was rather hastily considered an authority for the doctrine that such a voluntary conveyance could not, by a subsequent sale for value, be avoided. The head note to the case is, however, inaccurate. The voluntary conveyance was in fact considered not to have been so avoided, as it had been expressly enacted by 39 Eliz. c. 5—under the provisions of which the charity had been established and endowed—that land with which any charity thereby founded should be endowed, should not be alienated. The case therefore was no authority to support the view that a voluntary conveyance to a charity could not be avoided by a subsequent sale for value.

In *Doe d. Newman* v. *Rusham* (1852), 17 Q.B. 723, a voluntary conveyance of land was held not to have been avoided by a subsequent sale for valuable consideration, but the conveyance in that case was not for any charitable purpose and could not have been avoided by the purchaser under the statute of 27 Eliz. c. 4.

In the later case of *Ramsay* v. *Gilchrist* [1892] A.C. 412, it was decided that a voluntary gift of land for charitable purposes was not to be treated as covinous within the meaning of 27 Eliz. c. 4 and could not be avoided by a subsequent sale for value, the presumption being that a charity is charitable and not fraudulent and therefore *primâ facie* not to be treated as covinous (*ibid.*, p. 415).

The point in question was finally disposed of by the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), which enacted that "no voluntary conveyance of any lands, tenements or hereditaments, whether made before or after the passing of the Act (29th June, 1893), if in fact made *bonâ fide* and without any fraudulent intent, shall hereafter be deemed fraudulent or covinous within the meaning of the Act of 27 Eliz. c. 4, by reason of any subsequent purchase for value, or be defeated under any of the provisions of the said Act by a conveyance made upon any such purchase, any rule of law notwithstanding."

The statute of 27 Eliz. c. 4 applied only to land and interests in land (*Bill* v. *Cureton*, 2 My. & K. 503). In that case an irrevocable voluntary settlement was of certain stock made by a single woman, not then contemplating marriage, upon trusts for her separate use for life and after her decease for the benefit of any husband and children, and in default of children for such person or persons as she should by deed or will appoint and in default of appointment upon trust for her next-of-kin. In a bill filed by her for the purpose of setting aside the settlement, a mortgagee of her interest thereunder being joined as co-plaintiff, the Court held that she was not entitled to the assistance of the Court to release herself from it on the ground that a voluntary settlement, where the trust is actually created, is binding upon the settlor, a doctrine which has never been disputed, and the statute of 27 Eliz. c. 4, by declaring that voluntary conveyances shall be void only against purchasers for valuable consideration, assumes that, as against the authors of such settlements, they were good (*ibid.*, p. 510).

The Court further held that the mortgagee, claiming as purchaser under 27 Eliz. c. 4, could not claim protection under the statute, as settlements of personal property were not within its provisions, and not having the protection of the statute, he could not have a better title than the settlor. As regards the avoidance of gifts of personal property, settlements, where they affected the rights of creditors, were subject to the provisions contained in the statute of 13 Eliz. c. 5. The provisions of that enactment applied to goods and chattels as well as to land, and a conveyance of such property for a consideration might nevertheless have been held voluntary and fraudulent against creditors.

This enactment as well as 27 Eliz. c. 4, and the Voluntary Conveyances Act, 1893, above referred to, were repealed by the Law of Property Act, 1925 (14 & 16 Geo. 5, c. 20, s. 207, Sched. 7) and by s. 172, sub-s. (1), of that Act every conveyance of *property* made, whether before or after the commencement of the Act (i.e., 9th April, 1925) with intent to defraud creditors, is made *voidable* at the instance of any person thereby prejudiced.

This sub-section (1) of s. 172 does not affect the operation of a disentailing assurance or the law of bankruptcy for the time being in force (see sub-s. (2)) and does not extend to any estate or interest in property conveyed for valuable consideration and in good faith or upon *good* consideration and in good faith to any person not having, at the time of the conveyance, notice of the intent to defraud creditors.

It will be noticed that in the statute of 13 Eliz. c. 4, *valuable* consideration was necessary to enable a purchaser to claim the protection of the statute, whereas s. 172 of the Law of Property Act, 1925, protects a purchaser who takes in good faith and for *good* consideration. Section 173, sub-s. (1), of the Law of Property Act, 1925, enacts that every voluntary disposition of *land*, made with intent to defraud a subsequent purchaser, is voidable at the instance of that purchaser, and sub-s. (2) provides that, for the *purposes of the section*, no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made, if such subsequent conveyance was made after the 28th June, 1925 (i.e., the date of the passing of the Voluntary Conveyances Act, 1893).

And s. 174, sub-s. (1), provides that no acquisition, made in good faith without fraud or unfair dealing, of any reversionary interest (including an expectancy or possibility) in real or personal property for money or money's worth, shall be liable to be opened or set aside merely on the ground of undervalue, but this sub-s. (1) does not affect the jurisdiction of the Court to set aside or modify unconscionable bargains (sub-s. (2)), and applies to anything in action, and any interest in real or personal property (s. 205, sub-s. (xx)), and its provisions do not affect the law of bankruptcy for the time being in force.

Section 174 replaces the Sale of Reversions Act, 1867 (31 & 32 Vict., c. 4), which Act provided that no purchase made *bonâ fide* and without fraud or unfair dealing of any reversionary interest in real or personal estate should, after the date of the Act coming into force (i.e., 7th December, 1867), be opened or set aside, merely on the ground of undervalue. This provision of the Act of 1867, however, did not affect the jurisdiction of the Court to set aside unconscionable bargains (see *In re Beynon* v. *Cook* (1875), L.R., 10 Ch. 389).

The law of bankruptcy now in force is that of the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), as amended by the Bankruptcy (Amendment) Act, 1926 (16 & 17 Geo. 5, c. 7).

By s. 42, sub-s. (1), of the principal Act, every settlement not being a settlement made before or in consideration of marriage, or made in favour of a purchaser or incumbrancer, in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, is, if the settlor becomes bankrupt within two years after the date of the settlement, void against the trustee in bankruptcy, and if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, the settlement is void against the trustee in bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

A voluntary conveyance of real or personal property can be made in favour of any person or persons or body of persons, corporate or unincorporate, but as regards corporate bodies and where the conveyance is of land, a licence in mortmain is necessary under the provisions of the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict., c. 42), unless the corporation is exempted either under the Mortmain Acts or other authority.

As regards local authorities, the provisions contained in the Mortmain and Charitable Uses Act, 1888, relating to the acquisition of land in mortmain, and to the conditions under which assurances may be made to charitable uses, do not apply to any assurance by *deed* of land, whether voluntary or for full and valuable consideration, to any local authority for any purpose for which such authority is empowered by any Act of Parliament to acquire land (see Mortmain and Charitable Uses Act (Amendment) Act, 1892 (55 & 56 Vict., c. 11).

Under the Local Government Act, 1894 (56 & 57 Vict. c. 73), Parish Councils are incorporated and empowered to hold land for the purposes of their powers and duties without licence in mortmain (s. III, sub-s. (9)), and to accept and hold any gifts of property, real or personal, for the benefits of the inhabitants of the parish or any part thereof (s. VIII, sub-s. (1) (*h*)), and this power may be conferred by the County Council on a Parish Meeting (s. 19, sub-s. (10)). A gift of such a nature is a charitable trust (*Goodman* v. *Mayor of Saltash*, 7 App. Ca. 633).

As regards local educational authorities, these authorities may, for the purposes of their powers and duties, accept a gift of land without the necessity of obtaining a licence in mortmain, but the assurance must be sent to the offices of the Board of Education for the purpose of being recorded in the books of the Board as soon as may be after the execution of the deed or other instrument of assurance: see Education Act, 1921 (11 & 12 Geo. 5, c. 51, *s.* 117).

Where land is the subject of a voluntary gift for charitable, ecclesiastical or public trusts or purposes, it is deemed to be settled land, and the trustees have all the powers which are by the S.L.A., 1925 (15 Geo. 5, c. 18), conferred on a tenant for life and on the trustees of a settlement (s. 29, sub-s. (1)). Under s. 55 of the S.L.A., 1925, charity trustees have now power to grant land for (*inter alia*) public or charitable purposes in connexion with the charity estate for a nominal price or rent or *gratuitously* not exceeding the quantity limited by the Act, but unless the land proposed to be so alienated is exempted from the jurisdiction imposed by the Charitable Trusts Acts, 1853 to 1925, the consent of the Charity Commissioners, or, where the land is held for an educational charity, the Board of Education, is required to the grant (s. 29, sub-s. (3)). In like manner, where charity trustees desire to acquire *gratuitously* any interest in land, the like consent or order (if any) is required in reference to the disposition, dealing or *acquisition* as would have been requisite if the intended transaction were a sale (s. 29, sub-s. (2) (*b*)). Charity trustees, however, have always had power to acquire land by purchase or otherwise where the acquisition is beneficial to the charity and the formalities prescribed by the Mortmain Acts are observed (*Vaughan* v. *Farrier*, 2 Ves. Senr. 188).

Finally, the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), by s. 59, sub-s. (1), exempts gifts and dispositions *inter vivos* made or effected for public or charitable purposes from the provisions of the Act relating to property passing on the death of the donors, and the provisions contained in s. 74, sub-s. (1), of the Act relating to stamp duty on voluntary conveyances do not apply to a voluntary disposition of property to a body of persons incorporated by a special Act if that body is by its Act precluded from dividing any profit among its members and the property conveyed is to be held for the purposes of an open space or for purposes of its preservation for the benefit of the nation.

Shopkeepers and Priced Goods.

It has fallen to the lot of the present writer on several occasions to set examination papers in the law of contract, and once or twice he included a question somewhat in this form: "A shopkeeper has in his window articles to which prices are affixed. A customer enters the shop and requests to be supplied with one of the articles so displayed and marked, mentioning the particular article he desires. Is a contract thereby entered into which he can enforce if need be?" Singularly enough, there appears to be no English authority covering the point, and yet, perhaps, it is not so very remarkable that the question has not come up for decision inasmuch as there is usually no reluctance on the part of a shopkeeper to dispose of his wares to any customer willing to pay the price demanded. There are few people, moreover, who rush into litigation for the mere satisfaction of having a nice point of law decided. In the absence of English authority exactly deciding the point, what is the answer to the question on principle? Most of the students to whom the question was submitted answered that a legal contract had been concluded between the customer and the shopkeeper which could be enforced by the customer. This answer was a perfectly natural one; there was, said the examinees, an offer by the shopkeeper to sell at the price marked on the article and an acceptance of that offer by the customer; what more was needed to constitute a valid contract? The reasoning is certainly plausible, but is it sound? Is there an offer by the shopkeeper to sell at the price marked which is open for acceptance by the customer? In an old Scottish case—*Campbell* v. *Ker*, noted in Professor Gloag's treatise on "Contract in the Law of Scotland" (2nd ed.), p. 22, it is said that "It was stated in argument as too clear for doubt that a shopkeeper by affixing prices to his goods only intimated his intention to sell them at that price, and did not make any offer to sell which could be converted into an obligatory contract by acceptance." In South Africa some years ago the precise point arose for decision in somewhat peculiar circumstances in *Crawley* v. *The King* (1909), T.R. 1105. By an ordinance of 1904, operative in the Transvaal, it was made an offence for any person entering premises to remain therein wrongfully and unlawfully after being requested by the owner or occupier to leave. In the case before the court it appeared that a tradesman who advertised goods for sale at a specified price refused to supply them to a customer who demanded them. The shopkeeper requested the customer to leave the shop, and as the latter refused to comply, a constable was called in and a charge under the ordinance was preferred against the customer. The question, therefore, was whether the customer by refusing to leave the shop without being served was wrongfully on the premises. In the course of his judgment Mr. Justice Smith said this: "The mere fact that a tradesman advertises the price at which he sells goods does not appear to me to be an offer to any member of the public to enter the shop and purchase goods, nor do I think that a contract is constituted when any member of the public comes in and tenders the price mentioned in the advertisement. It would lead to most extraordinary results if that were the correct view of the case. Because then, supposing a shopkeeper were sold out of a particular class of goods, thousands of members of the public might crowd into the shop and demand to be served and each one would have a right of action against the proprietor for not performing his contract. I do not think these consequences follow from the mere advertisement of the price at which a tradesman sells his goods. It seems to me to amount simply to an announcement of his intention to sell at the price he advertises. There is nothing so far as I know which obliges a tradesman to sell to any customer who chooses to present himself at his shop; and if he refuses to serve the customer and demands that he shall leave the shop, in my opinion the customer wrongfully and unlawfully remains in the shop if he

still refuses after so being told to go." A decision of a South African court has, of course, no binding force in this country, but it would be treated, like any other decision of a Dominion tribunal, with great respect. Apart, however, from its force as a decision, its reasoning appears to be unanswerable both in principle and as a matter of common sense. Take the case of a second-hand bookseller who sends out his catalogue broadcast. Could it be said that anyone who wrote for a particular item in the catalogue had a legal contract with the bookseller under which the latter was bound to supply that book. The chances are that a number of persons are desirous of purchasing the volume, and is the poor bookseller under a liability to each of those persons who have written for it? To avoid any question of this kind arising many booksellers, it is true, take the precaution of stating on their catalogues that the books are offered subject to their not being already sold at the time any customer asks for them. But without any safeguarding clause such as that indicated, the true view of the catalogue would seem to be that it is a mere invitation to treat for its contents, and not an offer in the obligatory sense which can be accepted so as to form a binding contract.

A Decade of the Permanent Court of International Justice.

[CONTRIBUTED.]

(*Continued from p. 52.*)

Having arrived, however, at the above conclusion on what the judgment characterises (p. 18) as a "fundamental question of principle," the court proceeded to consider whether or not there exists a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation such as the facts of the *Lotus* case presented:

In this connexion the French Government maintained (p. 22) that—

(1) International law does not allow a State to take proceedings with regard to offences committed by foreigners abroad simply by reason of the nationality of the victim;

(2) International law recognises the exclusive jurisdiction of the State, whose flag is flown, as regards everything which occurs on board a ship on the high seas;

(3) This principle is especially applicable in a collision case.

The court held, by a majority—

(*a*) That it was unnecessary to consider the specific point involved in (1) (as regards which, Turkey relied on Art. 6 of her Penal Code, rendering foreigners liable to punishment, if arrested in Turkey, for offences committed abroad to the prejudice of Turkish subjects) inasmuch as Lieutenant Demon's negligent act, while committed on the *Lotus*, produced its effects on the *Boz-Kourt*, which was Turkish territory and therefore came within the range of the doctrine of objective territorial jurisdiction, viz., that a crime may be regarded as committed where it produces its effects;

(*b*) That the scope claimed for the law of the flag under contention (2) and the existence of the usage alleged in (3), had not been established.

The recognition of the doctrine of objective ex-territorial jurisdiction was supported by nine judges to one. Three expressed no opinion on the point. In favour of the application of this doctrine to the particular facts, the majority was seven to five. Some of the dissentient judges held the principle to be applicable only to intentional crimes, others excluded it as regards acts of navigation on the ground that by a special rule of customary law such acts are solely subject to the law of the flag. Lord FINLAY took the view that a ship at sea, being a movable chattel and not a place, is now not sufficiently assimilated to the territory of the State of the flag to render the doctrine in question applicable.

The majority of the court pronounced no opinion on two final contentions on the part of Turkey—

(*a*) That the offence of manslaughter imputed to Lieut. Demons was, by reason of their joint and simultaneous trial, "connected" (*connexe*) with the identical charge against the captain of the *Boz-Kourt* and that the Turkish courts had jurisdiction on that ground;

(*b*) That such jurisdiction was created also by Art. 6 (above mentioned) of the Turkish Penal Code.

These two last points were negatived, either expressly or by implication, in the dissenting judgments, and do not call for further comments now.

6. "The internationalisation of a waterway, traversing or separating different States, does not stop short at the last political frontier, but extends to the whole navigable river."

On this ground it was decided that the territorial jurisdiction of the International Commission of the River Oder, constituted under Art. 341 of the Treaty of Versailles, did not cease at the Polish frontier but extended to those tributaries of the Oder, which are situated in Polish territory (*The Oder Commission*, Ser. A. No. 23, 10th September, 1929).

Under this heading, reference may be made to an interesting decision as to the present position of the Kiel Canal. Art. 380 of the Treaty of Versailles provides that—

"the Kiel Canal and its approaches shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of entire equality."

On 21st March, 1921, the German authorities refused free access to the canal to the British steamship *Wimbledon*, then under time-charter to a French firm, on the ground that she was carrying war material for Poland, in aid of her war with Soviet Russia, and that a German Neutrality Order of 25th July, 1920, in relation to that war, forbade the transit. Ultimately the *Wimbledon* proceeded on her voyage and the French Government presented a claim for an indemnity for demurrage and deviation.

The court, by a majority, held (i) that, under its new régime, the Kiel Canal had become "an international waterway," which "must be open, on a footing of equality to all vessels," whether of war or of commerce, belonging to nations at peace with Germany (p. 22), and (ii), on the analogy of the treaties governing the Suez and Panama Canals,* that no breach of neutrality would have been committed by Germany in fulfilling her obligations under Art. 380 of the Treaty of Versailles (pp. 25-30).

7. In international contracts of loan to a State, a stipulation for the payment of the coupons or the redemption of the bonds in "gold" or "gold francs" is not null and void merely because, under the municipal law applicable to the case, a gold stipulation might be null and void when it relates to domestic transactions: *Serbian and Brazilian Loans*, Ser. A. Nos. 20/21, 12th July, 1929, p. 46.

The facts in these cases are too complicated to be stated or examined in such an article as the present. It must suffice to mention that the court held (1) that, as regards the substance of the debt and the validity of the clause defining it, the governing law was that of Serbia in the one case (p. 42) and Brazil in the other (p. 121); (2) that, so far as payment in France was concerned, French law must govern the currency (pp. 44 and 122); and (3) that since that law, as interpreted by the French courts, did not prevent the fulfilment of the obligations in France, in accordance with the stipulation in the contract, the creditor was entitled to claim in France the gold value stipulated for (pp. 47, 123). The report of the *Serbian and Brazilian Loans* cases suggests, and justifies, one adverse comment. It extends to over 150 pages, and yet it is presented to us, as indeed are all the judgments and advisory

*See Dupuis *Liberté des Voies de Communications*. Rec. des Cours, Vol. 2, pp. 194-218.

opinions of the Permanent Court, without a headnote. Surely "the panting student," whom HALLAM commiserated last century in his efforts to sustain the burden of English precedents, might be spared the still more maddening exercise of working backwards and forwards through these voluminous reports, of which unanimity in judicial opinions is not the most prominent characteristic, in an endeavour to find the arguments, the *obiter dicta*, the *rationes decidendi*, and sometimes even a concise statement of the facts, for himself. The Permanent Court might profitably follow the example of the English municipal courts in this particular. But such incidental blemishes do not weigh heavily against the enduring value of the work that the Permanent Court has already done and is destined to do. This imperfect survey of that work may not inappropriately be concluded by an extract from a letter (cited in the "British Year Book," 1930, p. 179) from Mr. STIMSON to President HOOVER on the subject of the accession of the United States to the Protocol of Signature of the Statute :—

> "Admitting freely all that must be accomplished by the quasi-legislative action of international conferences, which may meet to discuss and agree upon international compacts and codes, it is nevertheless, to the judicial action of a World Court, passing upon the individual controversies which arise between nations, that we must look not only for the application and interpretation of those compacts and codes, but for the flexible and intelligent development in this way of all the subsidiary principles and detailed rules which will surely be found necessary in such application."

Company Law and Practice.

LXII.

REDUCTION OF CAPITAL.

IT has been suggested that the requirements of the Act which deal with reduction of capital, in cases where creditors are not affected, are excessive, and even that there should be no necessity to apply to the court to confirm such reduction. The Greene Committee deals with this suggestion at page 10 of its report, where it is said : "In particular we are unable to adopt the suggestion made by some witnesses that in cases where creditors are not affected, the sanction of the court should not be necessary. Although ordinary reductions receive the sanction of the court without difficulty, we are of opinion that the necessity for that sanction is an important safeguard, while the procedure itself is quick and inexpensive."

At first sight there is a good deal to be said for the view that where you are neither diminishing liability in respect of unpaid share capital, nor paying to any shareholder any paid-up share capital, all that should be necessary is a special resolution of the company for reducing the capital. After all, you may say, all you are doing is purely a matter of book-keeping, which is an internal matter and cannot affect the creditors of the company ; then why should it be necessary for the court to have any hand in the matter ?

Apparently there must be some virtue in having to go before the court, for it is referred to by the Greene Committee as being a safeguard. This virtue is found in the rule which the court has laid down, and which, despite differences of opinion, is now acted upon, that, where a cancellation of paid-up share capital which is lost or unrepresented by available assets is to be confirmed, there ought to be some evidence thereof. Lord PARKER OF WADDINGTON has stated, in a case which will be referred to later, that, if not necessary, it is at any rate wise and prudent to require some such evidence, and recent cases where the rule has not been applied are hard to seek.

The effect of the rule in practice is that a cancellation of paid-up share capital on the ground of it being lost or unrepresented by available assets is only confirmed if such be the fact. If, however, cancellation were to be effected without such being the fact (which might well happen were the confirmation of the court not required) a reserve fund might be created by means of adjustments in the accounts of the company, which could be distributed among the members of the company. Such an operation would (quite apart from the fact that the statute does not authorise it) undoubtedly be detrimental to the best interests of the creditors.

The rule as to the proof of loss has had a somewhat chequered career, and it may not be uninstructive to examine it briefly. Until the case of *Poole* v. *National Bank of China* [1907] A.C. 229, it had been the practice for some years to require such proof. In this case, however, Lord MACNAGHTEN, emphatically repudiated the necessity for observing this practice, saying that he was surprised to hear it argued that the court had no jurisdiction to entertain a petition for the reduction of capital unless it was proved that the capital which the company proposed to cancel is lost or unrepresented by available assets. "The condition that gives jurisdiction," says his lordship at p. 239, "is not proof of loss of capital or proof that capital is unrepresented by available assets . . . The jurisdiction arises whenever the company seeking reduction has duly passed a special resolution to that effect."

This may be so, and no doubt the court could confirm a reduction without such proof—at any rate it has done so, in a case subsequent to the *National Bank of China Case*, *supra*, namely, *Re Louisiana & Southern States Real Estate and Mortgage Co.* [1909] 2 Ch. 552, where NEVILLE, J., confirmed a reduction without any evidence of loss. In this case, however, there were no creditors : but notwithstanding this case, which does not appear to have been followed in any reported case, it certainly seems as if such evidence ought to be required by the court, and in practice it is.

In the Scottish case of *Caldwell* v. *Caldwell & Co.* (*Papermakers*), *Ltd.*, before the House of Lords, reported in [1916] W.N. 70, Lord PARKER OF WADDINGTON, in his opinion, states that since the decision in the *National Bank of China Case* the practice in the High Court in England with regard to this question of proof had not been uniform. His own practice, he said, had been to insist on *prima facie* evidence of the existence of the state of facts referred to in the resolution. If no such *prima facie* evidence were forthcoming, he went on, it might well be that the special resolution had been passed under the influence of some mistake or misrepresentation as to the true facts, and it would be unfair to the minority, if not also to the majority, of the shareholders to confirm a reduction voted under such circumstances. It would seem, however, that this objection is not perhaps very serious, for if it be pursued to its logical conclusion, every resolution of a company which depends upon a particular state of facts ought to be submitted to the court of confirmation.

His lordship later proceeds to outline the possibility of the creditors of the company being affected by the making of what amounts to a return of capital, as indicated above : and this possibility is the real answer to the suggestion that the necessity of the sanction of the court could ever properly be dispensed with.

(To be continued.)

ADMIRALTY SHORT CAUSE RULES.

In the list on 23rd January, before Mr. Justice Langton, who is, pending the President's further directions, in charge of the Short Cause Rules List in the Admiralty Division, there were five applications for directions thereunder, four damage actions and one salvage. As there were several in the list last term following almost immediately after the amendment of the rules, this seems to indicate that solicitors, in their clients' interest, are most anxious to take advantage of these rules. On each of these applications a day was appointed for the trial to take place within a month.

A Conveyancer's Diary

Renvoi.

Two important cases were decided last year in which the "doctrine of renvoi" was considered with which I intended to deal long ago, but for one reason and another I have not had an opportunity of doing so.

The subject has been discussed a good deal of late owing, no doubt, to the attention called to it in this country by the cases to which I will refer. It seems to be a perennial source of discussion on the Continent.

The whole trouble really arises out of the difference between law of domicil as understood in this country and that which applies in other countries.

It has long been recognised that the right of succession to movable property is governed by the "law of the domicil." The difficulty arises in deciding what exactly is meant by that phrase.

On the one hand, it is argued that the expression "the law of the domicil" means only that part of the law of the place which (according to English law) is the place of domicil. In other words, the "municipal law" of that place, the law which would be applicable to the persons who by nationality and residence belong to that place.

On the other hand, it is contended that "the law of the domicil" does not only mean the "municipal law" of the country of domicil but the whole law of that country, including the rules of private international law as interpreted and administered there.

The difference between the two views may best be shown by an illustration.

Suppose a man, who is by birth an Englishman, die intestate in a foreign country after having resided there for many years.

According to English law the first question to be determined, in order to ascertain how his movable property should be distributed, is—what was his domicil? Again, according to English law, that question turns upon another—what, at the date of his death, was the country where he had made his permanent home? It matters not in our law what his nationality may be, for if he has established himself in a country *animo manendi* that is the country of his domicil.

It follows that the law governing the succession to the movable property of such a man is determined by the law of the foreign country in which he has made his home.

Suppose, however, that under the law of that foreign country our law of domicil is not recognised and the movable property of such a man is, according to the rules of private international law applied there, to be distributed in accordance with the law of England, that is the law of his nationality.

In that case (which often happens) we have the law of England declaring that the law of the foreign country is to prevail and the law of the foreign country asserting that the law of England is to be applied.

And so arises the "doctrine of renvoi," and the "*circulus inextricabilis*."

Of course, the question does not arise at all if by the "law of the domicil" as we understand it, is meant the municipal law of the country of domicil. That is the law which in that country would be applied to one of its own nationals. That, as we shall see, has been suggested as a solution of the difficulty, but it has not been accepted in the latest cases and may, I think, be regarded as discredited.

I do not propose to attempt to go into the history of the matter, interesting though it is, that being quite beyond the scope of a short article. Still less, can I deal with the subject of "domicil," so far as it belongs to the region of "conflict of laws." All I can do is to call attention to the most important recent cases.

In *Re Annesley; Davidson* v. *Annesley* [1926] 1 Ch. 692, the question was with regard to the validity of the testamentary dispositions of a lady who resided in France and made a will disposing of the whole of her property. Russell, J., held as a fact that according to English law the deceased had acquired a French domicil. Therefore the law of France applied. Under that law the deceased was not entitled to dispose of more than one-third of her personal property, because she left two children surviving her.

Evidence was given by French legal experts to the effect that the French municipal law would be applied by the French courts in such a case, notwithstanding that the deceased had not acquired a French domicil under the French Civil Code. Accepting that evidence, the learned judge decided that the French law must govern the matter.

This case is interesting because of a dictum of the learned judge which has caused considerable discussion. His lordship said:—

> "When the law of England requires that the personal estate of a British subject who dies domiciled, according to the requirements of English law, in a foreign country, why should this not mean in accordance with the law which that country would apply, not to the *propositus*, but to its own nationals legally domiciled there."

The learned judge added that that appeared to him to be "a simple and rational solution" of the difficulty and dispose of the *circulus inextricabilis*. It is a solution, however, which has not commended itself to other judges.

Re Ross; Ross v. *Waterfield* [1930] 1 Ch. 377, was a case where an English lady who was domiciled in Italy according to English law made a will excluding her only child from any participation in her estate.

Under Italian municipal law applied to Italian nationals the will was not effectual to exclude the son, but under the whole law of Italy, including its rules of private international law, the law of England governed the case and the will was valid.

That case was, therefore, a perfect example of the operation of the "doctrine of renvoi."

Luxmoore, J., in an elaborate considered judgment, did not adopt the solution suggested by Russell, J., and held that the whole law of Italy was the law which should be looked at, not the municipal law, and that being so, the law of England applied. There was no further throw back to Italian law as the English courts would "accept the renvoi." The "*circulus inextricabilis*" was therefore cut at the point where Italian law referred the matter back to English law.

In *Re Askew; Marjoribanks* v. *Askew* [1930] 2 Ch. 259, Maugham, J., followed the decision in *Re Ross* and also, of course, rejected the "simple and rational solution" suggested by Russell, J., in *Re Annesley*.

I have no space to deal with the judgment in this case, but I may say that it seems to me to be the most illuminating yet delivered on the subject.

I cannot do better than conclude this article by quoting the last two sentences in that judgment:—

> "I cannot refrain from expressing the opinion that it is desirable that the position of British subjects who acquire domicile in countries which do not agree with our views as to the effect of a foreign domicil should be made clear by a very short statute. There is much to be said for the 'simple and rational solution' suggested by Russell, J., in *Re Annesley*; but whether the municipal law of the foreign country or the municipal law of England is to be held applicable in British courts in these cases, it is clearly desirable that the matter should be certain and should not be held ultimately to depend on the doubtful and conflicting evidence of foreign experts."

THE AUCTIONEERS' AND ESTATE AGENTS' INSTITUTE.

A sessional evening meeting of members will be held at 29 Lincoln's Inn Fields, W.C.2, on Thursday, 5th February 1931, at 7.30 p.m., when Mr. W. R. Davidge, F.R.I.B.A., F.S.I., A.M.Inst.C.E., Past President Town Planning Institute, will deliver a paper entitled "Compensation and Betterment in regard to Town Planning Schemes."

Landlord and Tenant Notebook.

The Meaning of "Adjoining."

"There are three words, 'adjoining,' 'adjacent,' and 'contiguous,'" said Buckley, L.J., "which lie not far apart in the meaning which they convey. But of no one of them can its meaning be stated with exactitude and without exception . . . Any one of the three may by its context be shown to convey 'neighbouring' without the necessity of physical contact": *Cave* v. *Horsell* [1912] 3 K.B. 533, C.A., at p. 544. The same conclusion was arrived at by Kekewich, J., in another case, and he, being learned in literature as well as in law, illustrated the point by quoting from Milton, "Paradise Lost," ix, 449: "As one . . . Forth issuing on a summer's morn to breathe, Among the pleasant villages and farms *Adjoin'd* . . .": *Re Baroness Bateman and Parker's Contract* [1899] 1 Ch. 599, at p. 601.

The King's Bench Division, in dealing with five recent de-rating appeals, has held that in the Rating and Valuation (Apportionment) Act, 1928, s. 2 (3), the word "contiguous" means "in actual contact"; and a similar strict construction has been favoured in most cases arising out of the use of this word, or of the word "adjoining," in statutes. But in construing a covenant in a lease, the Court has to ascertain the intention of the parties as expressed by the whole of the covenant, and the questions that have arisen have related not only to the necessity of some physical contact between premises granted and premises alleged to adjoin, but also to the area covered when such contact was an established fact.

The covenant which has most frequently given rise to difficulties is that by which a landlord undertakes to restrict the user of other premises, a covenant which has gained in importance since the passing of the Landlord and Tenant Act, 1927 (see s. 4 (1) (*e*)). A decision that has been much cited in these cases is, it so happens, one construing an enactment of the criminal law, *R.* v. *Hodges* (1792), Moo. & M. 341, in which it was held that an indictment for larceny based on the then equivalent of the Larceny Act, 1916, s. 8 (2) (*b*), must be supported by evidence showing that the land "adjoining" any dwelling-house was absolutely contiguous to that house. This interpretation was adopted in *Vale & Sons* v. *Moorgate Street and Broad Street Buildings Ltd. and Albert Baker & Co. Ltd.* (1899), 80 L.T. 487, in which a landlord, who owned a large block of buildings, had covenanted with the tenant of a shop at one end of the block not to permit "any of his tenants of his or their adjoining premises . . . to carry on upon such premises the business of a tobacconist"; the tenant took action when a shop at the far end was opened by a competitor, but the court held that the covenant had not been broken.

But subsequent decisions have shown that a very slight variation in wording will exclude the operation of *R.* v. *Hodges*; and if a test may be suggested in these cases, it is that the first thing to be considered is whether the word "any" be used in addition to the word "adjoining" in qualifying the word "premises." The presence of this word played some part in the decision in *Cave* v. *Horsell*, *supra*, in which the Court of Appeal, by a majority, reversed a decision in favour of a landlord who, owning a row of shops and other property, had covenanted with the tenant of one shop (No. 4, Limes Parade), not to let "any of the adjoining shops belonging to me on the Limes Estate" for the purpose of furniture dealers, etc. The breach complained of was the letting of No. 6, which was not next door, to a rival dealer. Vaughan Williams, L.J., dissenting from his brethren, held that *R.* v. *Hodges* applied; but the majority thought that as the word "any" imported plurality, the object of the parties was that the scope of the covenant should not be limited to shops in actual physical contact with that of the plaintiff's.

Then in *Derby Motor Cab Co.* v. *Crompton and Evans Union Bank* (1913), 29 T.L.R. 673, Eve, J., though deciding the case on the issue of fact and holding that even if the covenant "not to let the adjoining premises belonging to me as a motor garage and office" without giving the plaintiff the first refusal applied there was insufficient evidence of the alleged intention of the letting complained of, discussed the above-mentioned decisions, because the letting in question was not of premises in actual physical contact with the plaintiff's; and, adverting to the absence of the word "any," said he would give the expression its primary meaning, as in *R.* v. *Hodges*, and thus distinguish the covenant from that in *Cave* v. *Horsell*. This, though the defendants did not in fact own any premises immediately contiguous to those let.

But the presence of the word "any" has not the effect of including in the scope of the covenant property acquired subsequent to the demise; in *Buckell* v. *King and Koral* (1895), 40 Sol. J. 50, the lease granted in 1888 contained a landlord's covenant not to let "any of the adjoining shops . . . belonging to me . . . to be used as refreshment rooms," and when the setting up of a similar business on premises acquired by the lessor in 1894 led to proceedings, the court held that *primâ facie* "belonging to me" meant "then belonging to me."

Other covenants which frequently contain the word "adjoining" are those designed to insure privacy or to prevent the acquisition of a right to light. A purchaser has been held not to have broken a covenant "in the erection of any buildings adjoining the hereditaments of the vendors," not to insert lights overlooking such other hereditaments by placing windows in houses he built 20 feet away: *Ind Coope and Co. Ltd.* v. *Hamblin* (1900), 81 L.T. 168, C.A.; and the court will not construe a covenant so as to give a lessor the right to derogate from his grant if any other construction be possible; thus, if a lease grants lights and the tenant covenants not to object to works to "adjoining premises," this means only premises in actual contact with his own: *White* v. *Harrow* (1902), 86 L.T. 4, C.A.

Our County Court Letter.

OBSTRUCTION OF VIEWS OF SHOP WINDOWS.

The extent to which the above is permissible was considered in *Mabin* v. *Hamer*, recently heard at Torquay County Court, in which the claim was for an injunction and £10 damages in regard to (*a*) the wrongful interference with the plaintiff's sun-blind, (*b*) excessive user of a right of way. The parties were occupiers of adjoining shops, both owned by the plaintiff, who had granted the defendant a fourteen years' lease of his premises from July, 1919, together with a right of way for him and his family along the dividing passage. The plaintiff was a jeweller, and (in addition to her sun-blind) she had protected her window by means of a drop curtain at the side. This had been removed by the defendant, for the reason that it interfered with the display of confectionery in his own shop window, and (with regard to the dragging of packages through the entry) he contended that that was the usual method of delivering goods for the shop. His Honour Judge The Hon. W. B. Lindley gave judgment for £1 damages, and granted an injunction to restrain (*a*) interference with the sub-blind, and (*b*) the delivery of goods along the passage, as the right of way was limited to the lessee and members of his household.

The above defendant, by removing the drop curtain, was seeking to exercise a remedy to which he had no legal right, as shown by *Smith* v. *Owen* (1866), 35 L.J. Ch. 317. The plaintiff there owned a shop in Bond Street, and the defendant, as owner of the house next door, had commenced alterations which would bring the front further into the street. The result was that the plaintiff's shop could only be seen from a shorter distance, although there was no interference with the internal light or the window display. An injunction was

claimed against interference with ancient lights, on the ground that the plaintiff was entitled to the same protection from obstruction of the view of his goods by the public, just as if there had been interference with the access of light. Vice-Chancellor Wood rejected this proposition, however, and pointed out that (1) the only complaint was that persons would not see the goods as soon as they could before the alterations; (2) when they reached the front of the shop, the goods could be seen as well as before: (3) if a sign were hung up, such as a pawnbroker's balls, there was nothing to prevent a neighbour from building so as to obstruct the distant view of such a sign. The action was therefore dismissed, with costs.

Interference with the view of possible customers had also been held to afford no cause of action in *Butt* v. *Imperial Gas Company* (1866), L.R. 2 Ch. App. 158. The plaintiff claimed an injunction against the erection of a gasometer, which he contended would prevent his board (exhibiting his name and trade) from being seen from the highway, but Vice-Chancellor Kindersley dismissed the action with costs. Lord Chelmsford, L.C., upheld this decision, on the grounds that (1) as the building of a wall, which merely intercepts the prospect of another (without obstructing access of light and air) is not a legal injury; (2) *a fortiori*, an erection which merely obstructed premises from the view of passers-by, could not be the subject of an action. Compare a "County Court Letter" entitled "Injuries from Defective Sun Blinds" in our issue of 2nd August, 1930 (74 Sol. J. 516).

ESTATE AGENTS' COMMISSION.

In *E. H. Goddard and Son* v. *Hopewell and Another*, recently heard at Nottingham County Court, the plaintiffs claimed £20 as commission on the negotiation of a mortgage for £2,000. The defendants (husband and wife) had agreed to pay 1 per cent. commission if a certain second mortgage could be arranged, and the plaintiffs had found a lender at 6½ per cent. interest. The defendants, having accepted the arrangement, had subsequently declined to proceed, but the plaintiff's case was that they were nevertheless entitled to their commission. The defendants denied ever having accepted the arrangement, as they demurred to paying interest at 6½ per cent., and they contended that the plaintiffs had proceeded with the matter while the defendants were still considering the offer. His Honour Judge Hildyard, K.C., held that (1) the arrangement had been accepted by the wife, whose misfortune it was to have had her acceptance acted upon so promptly; (2) the husband was only acting as agent for the wife. Judgment was therefore given (*a*) for the defendant husband, with costs against the plaintiffs; (*b*) in favour of the plaintiffs against the wife for £20 and costs. Compare "County Court Letter" entitled, "Husband's Liability for Wife's Debts," in our issue of the 6th December, 1930 (74 Sol. J. 813).

Practice Notes.

THE LIABILITIES OF BILLPOSTERS.

In *Merthyr Corporation* v. *Merthyr District United Bill Posting Company Limited*, recently heard at Merthyr County Court, the claim was for certain hoarding rents, which had been in arrears since 1927. In 1924, by an agreement under seal, the defendants agreed to pay an annual rent per hoarding of 1s. which was subsequently increased in practice to 2s. 6d., but the defendants had withheld payment since 1927 in order to test their liability for hoardings abutting upon the highway. His Honour Judge Rowland Rowlands held, that a local authority, in whom a street was vested under the Public Health Act, had a disposable right of property therein, and the agreement for letting the hoardings was *intra vires*. Judgment was therefore given for the amount of hoarding rents (at 1s. per year) due since 1927, the question whether there were thirty-four hoardings (as claimed) being referred to the Registrar. It is to be noted that, although such documents are often referred to as leases or tenancy agreements, it was held in *Wilson* v. *Tavener* [1901] 1 Ch. 578, that a contract to let an end of a cottage (as a bill-posting station) did not create an annual tenancy, but was merely a licence revocable on reasonable notice.

MINERS' LIABILITY FOR CHECKWEIGH LEVY.

In the recent test case of *Cotton* v. *Wass*, at Alfreton County Court, the claim was for £6 10s. 11d. as the charges for weighing coal got by the defendant and passed over the plaintiff's weighbridge. The facts were as follows: (1) the plaintiff was originally checkweigher for the low main seam only—another man being checkweigher for the hard coal seam; (2) since July, 1919, all the coal from both shafts had been put upon one set of screens and weighed in one box, viz., the plaintiff's; (3) he had nevertheless failed to secure re-election or to take a ballot of the men working in the hard coal and Waterloo seams, formerly served by the other checkweigher. It was submitted for the defendant that there was no compulsion to elect a checkweigher, but, in order to regularise the position, (*a*) the defendant and the other men on the hard coal seam should have balloted out their checkweigher, (*b*) another ballot should then have been held, either to elect or reject the plaintiff, (*c*) as matters stood, the hard coal miners were not responsible for the checkweigh levy, and could not be sued by the plaintiff, whose position was illegal. It was contended for the plaintiff that the mine was all one, and a ballot of the majority therefore sufficed to elect the plaintiff, even if the hard coal men had had no chance to vote. His Honour Judge Procter (in a reserved judgment) held that the plaintiff had not complied with the Coal Mines Regulation Act, 1887, s. 14, as his neglect to ballot the hard coal miners, who were paid by weight, was fatal. Judgment was therefore given for the defendant, with costs on Scale B. Compare *Thorpe* v. *Davies* [1908] 2 K.B. 750.

Reviews.

A Text-book of Medical Jurisprudence and Toxicology. By John Glaister, M.D., D.P.H., F.R.S.E., and John Glaister, Junior, M.B., Ch.B., M.D., D.Sc. Fifth Edition. Edinburgh: E. & S. Livingstone. 30s.

No technical work reaches a fifth edition without having very definite merits, for the people who buy it are largely those qualified to find its defects, and, if the defects are great, to show resentment by not renewing their patronage.

The present work has very definite merits. It is comprehensive and avoids repetition. It is practical, and yet informed by scientific theory. It is well printed, usefully illustrated, and inexpensive. The index, unluckily, like many others, has mistakes. We hope it will be carefully revised for the sixth edition which will doubtless be produced in due course.

To attempt a detailed examination of a scientific work of over 900 pages, packed with facts, and inferences from facts, would be idle; to give a summary of its contents uninteresting. We can only say that the practitioner will find in it information on the most diverse subjects and help in most of the situations he is likely to be in vis-à-vis the law.

The law itself is not always clearly and correctly stated. We fancy the authors are better acquainted with Scots law than English. Under the heading "dying depositions," dying declarations, not at all the same thing, are dealt with, a piece of confusion more common than creditable.

The section on toxicology is detailed and exhaustive and is of exceptional value to the medical man of limited experience. It is interesting to note that one great group of toxic agents, the glandular extracts, has no place. It is to be hoped they are not used for murderous purposes, but if they are, no technique of detection seems to be yet available. That they are not more common causes of death than they appear to be is surprising in view of the frequency with which lethal doses are left in unattended motor cars by thoughtless doctors. Perhaps familiarity produces this form of negligence. It should itself be a punishable offence.

Jangle-Jingles. Lyrics of a Lone Lawyer's Leisure. Written and composed by FRANK WHITE. In three Series. (1) Songs for and about Children; (2) Songs of The Services; (3) Miscellaneous, including some in a lighter vein. Crown 4to. London: The Solicitors' Law Stationery Society, Limited, 15, Hanover-street, Regent-street, W.1. The three Series 15s. 6d., post free.

It is seldom that we are called upon to review anything quite so light in vein as these songs written by a solicitor, Mr. Frank White, of Great Portland Street. But the quality of the songs, as well as the legal source from which they sprang, makes any apology unnecessary.

These songs we are told were written during Mr. White's leisure, and he is to be congratulated on having put it to such good purpose. Originally sung by their author for the amusement of his friends, the publication of these songs in a permanent form was due to them on merit.

They range from the sweet sadness of "Re-union" to the swinging rhythm of "The Song o' the Drum," and the rollicking fun of "The Flabbergasted Fishmonger" and "Nuthin' Noo." The author is perhaps at his best in the latter.

Each volume contains some twenty songs, a few of which have been set to music.

Underhill's Law of Partnership. Fourth edition. By MILNER HOLLAND, B.C.L., M.A., Barrister-at-Law. 1931. pp. xxvii and (with Index) 207. London: Butterworth & Co. 10s. 6d. net.

This little book on so vast a subject makes no pretence, as its original author pointed out, to the position of a text-book, but is merely a broad sketch giving the salient features of the subject. In that capacity it has been in the past a work of proved utility both in the hands of the law student and commercial man who have found its concise clarity and excellence of arrangement admirably suited to meet their particular requirements. It may be observed that the book does not deal with joint-stock companies which are, of course, governed by special statutes. A number of important decisions affecting partnership law, given since the last edition eleven years ago, have been carefully incorporated in the present edition and give a correct exposition of the law on the subject as it stands to-day. The effect of the new property statutes, also passed since the last edition, is adequately noted. The index of twenty-seven pages is exceptionally comprehensive and makes easy of access a book which should be in the hands of all affected by this subject.

Dawson's Accountants' Compendium. By the late SIDNEY STANLEY, M.Com., F.C.A. Fifth Edition. Revised by ARTHUR LIONEL MORELL, A.C.A. and WILLIAM BENJAMIN CULLEN, F.C.A. With an Appendix on Scots Law, by A. G. MCBAIN, Chartered Accountant. In two Vols. Crown 4to. Vol. I. pp. 416. Vol. II. pp. 417 to 782. London: Gee & Co. (Publishers), Ltd. 50s. net.

This Compendium admirably fulfils the publishers' description of a complete lexicon for accountants. It has now been brought up to date by incorporating the more important legislation since 1925 and by references to recent Case Law. An Income Tax Appendix and an Appendix on Scots Law have been added which still further increase its value.

We can warmly recommend this work to accountants and secretaries, and others holding responsible positions in commercial concerns.

Books Received.

Essays in Jurisprudence and the Common Law. ARTHUR L. GOODHART, M.A., LL.M., Barrister-at-Law, Editor of "The Law Quarterly Review." 1931. Demy 8vo. pp. xiii (Table of Cases) and (with Index) 295. Cambridge: At the University Press. 15s. net.

In Quest of Justice. CLAUD MULLINS, Barrister-at-Law. With an Introductory Letter by The Right Hon. Sir LESLIE SCOTT, K.C., Bencher of the Inner Temple. Demy 8vo. pp. xvi and (with Index) 448. London: John Murray. 12s. net.

The Economic Studies of a Lawyer. JOHN H. ROMANES, W.S. 1930. Demy 8vo. pp. (with Index) 94. Edinburgh: W. Green & Son Limited. 3s. 6d. net.

Cases on International Law. Vol. 1. *Peace.* By PITT COBBETT, M.A., D.C.L. (Oxon.). Fifth Edition. FRANCIS TEMPLE GREY, M.A., Barrister-at-Law. 1931. Demy 8vo. pp. xx and (with Index) 372. London: Sweet & Maxwell, Ltd. 17s. 6d. net.

The Yearly County Court Practice, 1931. Edition by EDGAR DALE and J. ALUN PUGH, Barristers-at-Law. Large crown 8vo. Vol. I. pp. ccxxxviii and (with Index) 1,806. Vol. II. pp. xvi and (with Index) 900. London: Butterworth & Co. (Publishers) Ltd. 40s. net. Thin Edition 5s. net extra.

Dawson's Accountant's Compendium, by the late SIDNEY STANLEY DAWSON, M.Com., F.C.A. Fifth Edition. Revised by ARTHUR LIONEL MORELL, A.C.A., and WILLIAM BENJAMIN CULLEN, F.C.A., with an Appendix on Scots Law, by A. G. MCBAIN, Chartered Accountant. In two Volumes. Crown 4to. Vol. I. A–Mee. pp. 416. Vol. II. pp. 417 to 782. London: Gee & Co. (Publishers), Ltd. 50s. net.

1066 *and All That.* By W. C. SELLAR and R. J. YEATMAN. Crown 8vo. pp. xii and 116. London: Methuen & Co., Limited. 5s. net.

French-English and English-French Dictionary of Commercial and Financial Terms, Phrases and Practice. By J. O. KETTRIDGE, F.S.A.A., A.C.I.S. Super Royal 8vo. pp. xii and 647. London: George Routledge & Sons, Limited. 25s. net.

Proceedings of the Fourth Conference of Teachers of International Law and Related Subjects. Super Royal 8vo. pp. xii and (with Index) 260. Washington: Carnegie Endowment for International Peace.

Lawyers on Holiday, 1930. (Reprinted from THE SOLICITORS' JOURNAL.) Foreword by J. LEONARD CROUCH, Barrister-at-Law. Demy 8vo. pp. xi and 27. London: The Solicitors' Law Stationery S ciety, Limited, 22, Chancery-lane, W.C.2, and branches. 2s. net.

Foreign Law Series. No. 1. *Taxation.* Demy 8vo. pp. 227. London: Sweet & Maxwell, Limited. 7s. 6d. net.

Income Tax. Personal Allowances at a Glance. By HARRY C. KING, F.S.A.A. Demy 8vo. pp. 17. London: Gee & Co. (Publishers), Limited. 1s. net.

Advance Date Book. July 1931 *to June* 1933. London: The Lecture Agency, Limited. 3s. 6d. net.

Paterson's Licensing Acts with Forms. By H. B. HEMMING, LL.B. and S. E. MAJOR. Forty-first Edition. 1931. Large Crown 8vo. pp. cxvi and (with Index) 1470. London: Butterworth & Co. (Publishers), Limited. Thick edition, 22s. 6d. net.; Thin, 26s. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Redemption of Workmen's Compensation.

Q. 2120. A bankrupt within three months of the making of the receiving order, commuted a sum he was receiving weekly by way of compensation from his employers, and accepted £325 in settlement thereof. He repaid his mother-in-law £272 5s., part of a sum secured by a second charge. It is open to suggest that if he did not repay that sum it is doubtful whether she would be covered fully by the security. The Official Receiver now wishes to say that, because that sum of money, part of his compensation, has been used for that purpose, the above section does not apply. I maintain that the following words under the section govern the matter:—

"A sum paid by way of redemption . . . shall not pass to any other person by operation of law" in such a way as to bar the Official Receiver's title. His title being barred there can be no question of preference independently of "relation back."

A. The protection afforded by the Workmen's Compensation Act, 1925, s. 40, is absolute, and the questioner's view is correct. If the bankrupt had assigned the £325 to his mother-in-law, her title would have been void, and he could have claimed repayment, but even then the Official Receiver would not have been entitled to any portion of the amount. The bankrupt, however, was actually paid £325, and his subsequent disposition of that sum, or any part thereof, cannot be challenged, either by the Official Receiver or the bankrupt himself, so that the title of the payee or payees is good.

Music Licence for Talking Film.

Q. 2121. The proprietor of a cinema theatre whose licence under the Cinematograph Act, 1909, is granted by the county council of the county in which the cinema is situate has a "talkie" machine in use in such theatre, and for silent films music is provided by a small orchestra consisting of a piano, violins, etc. Is the cinematograph licence sufficient to cover the music from the "talkies," and should the proprietor, in addition, obtain a music and dancing licence from the local licensing justices to cover the music of the orchestra for the silent films?

A. The cinematograph licence is not sufficient to cover the music from the "talkies," but a music and dancing licence is not necessary, either for the "talkies" machine or for the orchestra, unless the local authority have adopted the Public Health Acts Amendment Act, 1890, Pt. IV. If the Act has been adopted, but no music and dancing licence has been obtained, an offence has already been committed by the provision of the orchestra, and the addition of the "talkie" machine is therefore not much aggravation of the offence. Where the Act is in force, a licence is required for all music, whether produced by artists on the spot, by wireless, or by a panatrope or gramophone with amplifiers. If a music licence has already been obtained, this will, of course, cover the "talkie" machine, and the question will not arise in such cases.

Tenant's Compensation on Severance of Reversion.

Q. 2122. A is the tenant of a dwelling-house and land owned by B. B has sold the holding in two lots, a piece of land occupied by A being purchased by C, and the remainder of the holding occupied by A being purchased by D. C wishes to give notice to A to quit the land purchased by C. If C gives such notice, will same be valid, or will A have to receive notice from D in respect of the remainder of the holding? If C gives notice to A to quit and A elects to take such notice as notice to quit the whole of the holding, can A claim from C compensation for unreasonable disturbance of the whole of the holding, or in respect of only such part of the holding as is owned by C?

A. C's notice will be valid, without notice to A from D in respect of the remainder of the holding, but, under the Law of Property Act, 1928, s. 140 (2), as amended by the proviso added by the Amendment Act of 1926, A can elect to quit the whole of the holding, as suggested in para. 3 of the question. In that event A is entitled, under the Agricultural Holdings Act, 1923, s. 18 (1), to give notice to D that the notice is accepted as applying to the entire holding. The last-named section entitles A to require that compensation shall be determined as if the holding had not been divided, and he can therefore claim compensation from C in respect of the whole of the holding, and not merely in respect of such part as is owned by C. The arbitrator will then be required to apportion between C and D the amount awarded to A.

Damage from Stone Quarry.

Q. 2123. A, the owner of freehold land, grants B a right to quarry stone thereon, paying him a royalty of 3d. a ton in respect of all stone gotten. There is no written agreement. Subsequently A sells the farm, on one field of which the quarry is situated, to C, reserving all mines and minerals, including stone, but including a proviso that proper compensation shall be paid to C in respect of all damage that may be caused to him or to the land consequent upon getting the stone or minerals. The completion of the purchase took place eighteen months ago. The quarrying operations have continued and C has suffered damage in consequence.

(*a*) In respect of B's carts crossing his land to obtain access to the quarry from the road;

(*b*) In respect of the surface of the land taken in the quarrying operations, both in getting the stone and depositing spoil thereon; and

(*c*) In consequence of the disturbance to his game consequent upon blasting operations.

C has had his damage valued and has submitted a claim against B in respect thereof. B, being cognisant of the proviso in the conveyance to C above referred to, maintains that, whilst admitting C is entitled to compensation under the proviso in his conveyance, such compensation is payable by A and not by him, and he has accordingly referred him to A. C is on friendly terms with A and does not wish to sue him and maintains that inasmuch as B has caused the damage, it is to B that he must look for compensation. B refuses to pay and again refers C to A. Please advise whether in the circumstances C has any claim against B and quote authorities.

A. The right to quarry stone is a *profit à prendre*, and, being a grant of an interest in land, requires a deed for its validity. See *Wood* v. *Ledbitter* (1845), 13 M. & W. 843. B has probably not incurred sufficient expenditure to constitute acts of part performance, so as to cure the absence of a memorandum in writing under the L.P.A., 1925, s. 40. See *James Jones & Sons, Ltd.* v. *Earl of Tankerville* [1909] 2 Ch. 440. As B is merely paying a royalty, and has not bought or leased the stone, he is not the holder of a licence coupled with an interest, so as to

have any claim within the scope of the last-named case. B, therefore, has no right to quarry the stone in his own right, but he is not a trespasser, and therefore cannot be sued in tort by C. B is merely quarrying under licence from A, and (in the absence of a deed, or part performance, or interest coupled with the licence) this licence is revocable at will by A. The position, therefore, is that B is only quarrying the stone as A's agent, and A is liable to C by privity of contract, viz., the proviso in the conveyance. There being no deed entitling B to the stone, no question of privity of estate arises between B and C, and the latter (not being the reversioner) has no claim in that capacity against B. C therefore has a claim against A only and not against B, but there are no authorities directly in point. Compare *Hurst* v. *Picture Theatres, Ltd.* [1915] 1 K.B. 1, and a "County Court Letter" entitled "Verbal Tenancies of Sporting Rights" in our issue of the 1st November, 1930, 74 Sol. J. 725.

Guarantors of Company's Overdraft.

Q. 2124. In order to enable a limited company to have a bank overdraft exceeding £4,500, each of several persons guaranteed in writing to pay to the bank such a sum, not exceeding £200, as should be required to reduce the overdraft to £4,500. The company has recently gone into liquidation, owing to the bank about £5,300, and each of the guarantors has paid £130 to the bank, whereby the overdraft is reduced to £4,500; and the bank has accepted these payments in full discharge of the guarantors' liability. The guarantors now desire to prove in the winding-up of the company for the respective sums paid by them to the bank; but the bank claims to be entitled to prove for £5,300, the gross sum owing to it before the guarantors made their payments. In other words, the bank wants a dividend on the sums received by it from the guarantors. The form of guarantee does not contain any provision that is directly relevant, except, perhaps, the words "this guarantee is applicable only to overdraft in excess of £4,500." What are the respective rights of the bank and the guarantors with regard to the matter in dispute?

A. It is assumed that the guarantee expressly provides that the guarantors will pay "such a sum not exceeding £200 as shall be required to reduce the overdraft to £4,500," and that the same effect is not produced by other phraseology. If the above provision is actually in the guarantee, then (1) the consideration for the payments by the guarantors was the placing of such sums to the credit of the company, (2) the bank's claim to prove for £5,300 implies that the overdraft has not been reduced, (3) the result is that, as the guarantors' payments have not been credited to the company, the amounts may be reclaimed as money paid upon a consideration which has failed. The latter fact could probably be established by parol evidence, even if the guarantee does not contain the exact words in inverted commas, *supra*. The respective rights of the parties are therefore as follows: (*a*) the bank can only prove for £4,500, (*b*) the guarantors can prove for their contributions, (*c*) if the bank, however, claims to prove for £5,300, the guarantors can claim from the bank the amounts they have already paid. Compare *Burton* v. *Gray* (1873), L.R. 8 Ch. 932, as to non-performance by a bank of a condition upon which a guarantee was given.

Rating and Valuation Act, 1925, s. 11 (9)—Recovery of Rates by Rated Landlord from his Tenant.

Q. 2125. In 1929, A, being then the owner of a large house with a detached lodge, leased the lodge to B and C for ten years at the annual rent of one shilling. The lease contained a covenant by B and C to pay the rent, but contained no covenant by them to pay the rates, nor, on the other hand, did it contain any covenant by A to pay the rates, which were, however, prior to the sale paid by the husband of A. In 1929 A's mortgagees sold both the house and lodge to D, the sale being made subject to the lease to B and C. The rating authority now demand payment of the rates of the lodge from the purchaser, D, who admits his responsibility to pay in the first instance (by the joint operation of s. 11 (1) of the Rating and Valuation Act, 1925, and s. 71 of the Local Government Act, 1929), but claims to be repaid by B and C by virtue of sub-s. (9) of s. 11 of the Rating and Valuation Act, 1925. B and C contend that as there is no covenant in the lease, that they should pay rates, these must be borne by D without ultimate recourse to B and C. Is this contention sound, or can D compel repayment to him?

A. We express the opinion that sub-s. (9) of s. 11 of the R. & V. Act, 1925, would enable D to recover from B and C. As the lease is silent as to the payment of rates, the obligation of paying them is as between landlord and tenant on the tenant, *a fortiori* if a "net" rent or rent free of all deductions is reserved, and the effect, therefore, of this lease is an agreement by the tenant to pay the rates which are therefore recoverable under sub-s. (9). The statutory power of rating the landlord in certain cases is for the convenience of collection and not apparently intended to vary the incidence of rates as between landlord and tenant.

Registered Title Sale by Second Chargee.

Q. 2126. A is the owner of leasehold premises, the title of which is registered with a good leasehold title. The premises are subject to a first charge in favour of B, which provides that the borrower may pay off the whole of the balance of principal and interest owing on giving one month's notice. C holds a second charge on the premises and owing to the interest being unpaid for several months has given A notice requiring immediate payment with the usual clause that he will sell on the expiration of three months. The land certificate contains a restriction that, except under the order of the registrar, no transfer made in exercise of the power of sale in any charge subsequent to the first charge shall be registered without the consent of the proprietor of the first charge. C has received an offer for the premises which will be more than sufficient to pay off the balance and interest due on the first charge and also on the second charge. C is uncertain of his position as regards to B. C proposes to sell the premises and pay B the principal and interest due, together with one month's interest in lieu of notice.

(1) Is he entitled to do this?

(2) What is his proper course to adopt?

(3) Can B or C raise any objection to this?

(4) Will there be any difficulty with the Land Registry?

A. Yes.

(1) The provision as to the mortgagor's right to pay off enures for the benefit of C.

(2) The better plan is to give notice of intention to pay off and tender the money at the month. A can probably object to any payment of interest in lieu of notice.

(3) C must get B to sign a discharge, Form 53, or to join in a transfer and discharge, Forms 55, with words added as in Form 32. In any case, the transfer by C must be expressed to be "in pursuance of the power conferred by the charge dated the 19 , and registered the 19 ."

(4) If B refuses to concur, the money and a discharge should be formally tendered, and an undertaking to pay costs on delivery of bill given. A cannot object to C redeeming B's mortgage.

(5) The registrar will take no responsibility at all. If a document in proper form, purporting to be a transfer by C, "in pursuance, etc.", as above, accompanied by a discharge of B's charge, either in the same or a separate document, is presented, he will register the transferee: otherwise he will not. If B refuses to sign, C must go to the court as if it were a non-registered mortgage.

Obituary.

SIR WILLIAM BULL.

We regret to announce the sudden death of Sir William Bull, on 23rd January, whilst attending a dinner of the Association of Frome District Manufacturers, at Frome, Somerset. Sir William, who had represented Hammersmith, and latterly South Hammersmith, without break since 1900, retired from his Parliamentary activities at the General Election of 1929. He was born in 1863, and, following the family profession, was admitted a solicitor in 1889, becoming a partner in the firm of Bull & Bull, of 3 Stone Buildings, Lincoln's Inn. Prior to entering Parliament he represented Hammersmith on the London County Council from 1892 until 1901, during which time he was Chairman or Vice-Chairman of many Committees. During his thirty years or so in the House, in spite of the call of a busy practice, he succeeded in acquiring the reputation of a conscientious back bencher, who spoke but seldom, though when he did, to the point and with effect. He naturally interested himself particularly in those sides of Parliamentary work which were of interest to the legal profession, and his views on these matters were greatly respected by all. He was a very keen advocate of the Channel Tunnel Scheme, being Chairman of a Parliamentary Committee dealing with the subject for many years. Among his many other activities he was Principal of the Imperial Society of Knights Bachelor, even after he himself had received the honour of a baronetcy, and was very largely instrumental in obtaining the recently granted badge for that degree. He was a member of the Council of the Law Society, a Justice of the Peace, and his interest in matters charitable and humane was almost too wide to relate. He always showed a very great enthusiasm for the dignity and prestige of his profession and was a very active supporter of the Solicitors' Benevolent Association. Sir William, who was knighted in 1905, was created a Privy Councillor in 1918 and a Baronet in 1922. His eldest son, Stephen, succeeds to the baronetcy; he was admitted in 1928, and is now a member of the family firm, following, as the fourth generation, the profession of his great grandfather, Henry William Bull, who was admitted in 1813.

Correspondence.

Remoteness of Damage.

Sir,—In your issue of the 20th inst. you refer to the comments of Sir Frederick Pollock and Professor Winfield (on "Salmond on Contracts") on the decision of the Court of Appeal in *In re Polemis and Furness Withy & Co.* [1921] 3 K.B. 560, as conflicting with the rules as to remoteness of damage laid down in *Hadley* v. *Baxendale*. In your comments you remark that the damages in the *Polemis Case* (fire caused by the negligence of an employee in letting fall into the hold a plank, which in some way caused a spark that ignited petrol vapour collected in the hold from leaking cans) was "a hundred times more remote" than the damages claimed and disallowed in *Hadley* v. *Baxendale* (loss of profit from inability to work a mill due to the delay of the defendants in delivering a mill shaft, which they as common carriers had contracted to deliver to an engineering firm, where it was to serve as a pattern for a new shaft).

With the greatest deference to the learned authors, whose opinions you have referred, and to your own, I venture to express the view that the difference between the two cases is like the proverbial difference between chalk and cheese. In the one there was direct claim of causation between the act causing the damage and the damage itself and in the other there was not.

In the *Polemis Case* the arbitrators found, as facts, that the fall of the board was caused by the negligence of the workmen engaged in discharging the cargo; that the falling board coming into contact with something in the hold caused the spark; and that the spark caused the fire.

The obligation of the charterers was to restore the ship to the owners undamaged, unless by fire (or certain other perils) not due to the negligence of themselves or those for whose acts they were responsible.

The problem as put by Scrutton, L.J., was this—was the damage caused sufficiently directly by the negligent act and not by the operation of independent causes, having no connexion with the negligent act? No sensible person could fail to see that the answer to this question might properly be quite different in the case of the *Polemis* to what it would be in the case of *Hadley* v. *Baxendale*.

Moreover, the two cases had nothing in common except the fact that the plaintiff's claim in each case arose out of contract. In *Hadley* v. *Baxendale* there was an admitted breach of contract and the only question was measure of damages. In the *Polemis Case* the question was whether there was a liability at all. If there was a liability, there was no question of measure of damages; the charterers were liable for the full value of the lost ship (as assessed by the arbitrators) or they were not liable at all.

The question which determined the charterers' liability was, was the fire caused by the negligence for which they were liable? If it was, the amount of damages was already ascertained. In effect, therefore, although the shipowners' claim arose out of contract, the question which determined their right to recover seems to have been settled by exactly the same considerations as would have been applicable if the action had been one.

Norwich, ERNEST I. WATSON.
30th December, 1930.

Absent Tenants and Vacant Possession.

Sir,—In your Current Topics of last week's issue, under the heading "Absent Tenants and Vacant Possession," you apparently suggest that s. 146 of the Law of Property Act, 1925 requires a landlord to give notice to a tenant in cases where the ground of complaint by him is non-payment of rent. Surely you have overlooked sub-s. 11 of that section? Our own impression is that he is entitled to re-enter without legal process if there is rent in arrear and the lease contains a proviso for re-entry, although in actual practice owing to the risks involved he is usually advised to take proceedings, in the case of absconding tenants service being effected by exhibiting the writ on the premises.

Westminster, S.W.1, DIGBY & Co.
24th December, 1930.

"Now this Indenture Witnesseth."

Sir,—With reference to Mr. A. E. Woolnough's interesting letter in your issue of the 17th instant under the above heading, I would respectfully submit that it is incorrect to say that a modern conveyance "effects the transfer but is not a witness of it." The testatum contains "the operative words of the deed, or the words which effect the transaction, of which the deed is the witness or evidence" ("Williams on Real Property," 21st ed., p. 617). The deed witnesses, not, it is true, that the property has already been transferred, but that the vendor thereby actually transfers it. After the perfection of the deed its sole value is as evidence, for its destruction would not avoid or otherwise prejudice the transaction. In view of these remarks, I suggest that the use of the word "Witnesseth" is still as apposite as it was in the days of livery and feoffment.

Swanage, Dorset, JOHN P. H. COOKSON.
19th January.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

On the 1st February, 1551, was born Sir Edward Coke, the champion of the Common Law. His reputation is torn between his performances as a savage and merciless prosecutor and an upright and learned judge.

As a legal author, he compelled the tribute even of his bitterest enemy, Bacon, who admitted that but for his reports the law had been "almost like a ship without ballast."

In person, he was handsome and delighted in good clothes well carried, being wont to say that the outward neatness of our bodies should be a monitor of the purity of our minds.

He lived in a time when every man's faults and virtues stood out together sharply defined and strongly contrasted in Raleigh, for example, and in Bacon. When all is said, Milton's stately tribute is the proper epitaph of him who —

> "on the Royal Bench
> Of British Themis with no mean applause
> Pronounced and in his volumes taught our laws
> Which others at their Bar so often wrench."

GENTLER LAW.

Recently, persons connected with two different papers have appeared in the King's Bench charged with two separate contempts.

The editor, printers and publishers of the "Daily Herald" employed Mr. Norman Birkett to apologise for them and departed unscathed. On the other hand, a partner in the publishers of the "Daily Worker" came to court with a long address and no apology and left it with six months' imprisonment.

So mild is the sway of modern justice! Very different were the penalties for contempt in earlier days.

Take, for example, the case of The Rev. Thomas Harrison, in the seventeenth century, who was so disturbed by the views of Hutton, J., on Ship Money that he shouted out in court, "I do accuse Mr. Justice Hutton of high treason."

A fine of £5,000 and an apologetic pilgrimage round all the courts at Westminster did not save the excitable cleric from an action at the suit of the offended judge and a verdict of £10,000 damages.

PERJURY AGAIN.

McCardie, J., has not abandoned the subject of perjury. Since his much-discussed lecture (fully reported in our issue of the 3rd inst. at p. 9), he has told a witness that people who talk about forgetfulness, lack of observation or inability to collect one's thoughts never try cases; a thing is either perjury or truth.

It is interesting to compare this observation with the conclusions drawn by Mr. Justice Alpers from his experience in New Zealand courts. He ascribes most false evidence to "inaccurate observation, unconscious bias, faulty memory," and in psychological phrase "obstructive association of ideas," not forgetting the partisan spirit engendered by an "aggressive, suspicious or bouncing" cross-examination.

He cites an interesting case of the prosecution of a publican for Sunday trading. His house was on a corner and it was alleged that he served customers who entered by a door in a side street. The zealous but obviously honest witnesses against him had watched from a house opposite. They agreed exactly as to the number of persons who had entered and left the premises. Nevertheless at the trial two independent surveyors proved by plans that the side door in question was not visible from the window where the watchers sat. They had counted the people who entered and left the side street and their enthusiasm had led them to state as observed fact an inference, natural enough but not conclusive.

Notes of Cases.

High Court—King's Bench Division.

Siviour *v.* Napolitano.

Avory, Swift and Acton, JJ. 16th December, 1930.

LANDLORD AND TENANT—LESSEE'S LEASE OF WHOLE OF PREMISES—SUB-LESSEE USING PART OF PREMISES FOR HABITUAL PROSTITUTION—LESSEE NOT LIABLE—MEANING OF "LESSEE"—CRIMINAL LAW AMENDMENT ACT, 1885, 48 & 49 Vict. c. 69, s. 13 (2).

Case stated by a metropolitan police court magistrate.

An information was preferred by the appellant, Police Sergeant Siviour, charging the respondent, that he, being the lessee of certain premises, unlawfully and knowingly permitted part of those premises, to wit, the first and second floors, to be used for the purposes of habitual prostitution, contrary to s. 13 (2) of the Criminal Law Amendment Act, 1885. At the hearing of the information, which the magistrate dismissed, the following facts were proved or admitted: (1) the respondent was the lessee of the whole of the premises in question and had held the lease for about seven years; (2) he carried on a tailor's business on the ground floor and basement; (3) two upper floors, which were approached by a separate entrance and not through the shop, were respectively sub-let by the respondent unfurnished as flats to two women; (4) apart from his position as landlord the respondent had no right to enter the flats and did not occupy them; (5) observation upon the premises was kept by the police, who stated that the two tenants were known to them as prostitutes, and took men to their respective flats, but that no women other than the two tenants used the premises and their user was confined by each to her own flat. The magistrate held that "lessee" in the sub-section must be construed *ejusdem generis* with tenant and occupier, and that only those who had immediate control of the premises were responsible under the sub-section. By s. 13 (2) of the Criminal Law Amendment Act, 1885, any person who "being the tenant, lessee, or occupier of any premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution . . . shall on summary conviction . . . be liable," etc.

AVORY, J., said that the magistrate said that in his view, even if the premises in question were used for the purposes of habitual prostitution and the respondent knowingly permitted it, he was not guilty of the offence under the section. He (his lordship) was of opinion that the magistrate was right. The respondent was not a lessee of the flats within the meaning of the section. Appeal dismissed.

COUNSEL: *Croom-Johnson*, K.C., and *Eustace Fulton*, for the appellant; *J. C. Maude*, for the respondent.

SOLICITORS: *Allen & Son*; *Percy Robinson & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Brown and Brett *v.* Joyce.

Avory, Swift and Charles, JJ. 18th December, 1930.

LICENSING—GOLF-CLUB—CONSUMPTION OF INTOXICATING LIQUOR—SUNDAY HOURS—STATUTORY LIMITATIONS—LICENSING ACT, (1921 11 & 12 Geo. 5, c. 42), s. 2, s. 4 (*a*).

An information was preferred under the Licensing Act, 1921, by the respondent, Superintendent Thomas Augustus Joyce, against the appellants, John Murray Brown and Edward Charles Brett, secretary and steward respectively of the Frinton Golf Club, alleging that on Sunday, the 3rd August, 1930, they unlawfully, except during the hours during which intoxicating liquor might be sold or supplied on Sundays, Christmas Day, and Good Friday, in any licensed premises or club, for consumption either on or off the premises, supplied to certain persons in the Frinton Golf Club, being a registered club, certain intoxicating liquor, namely, ale and beer,

contrary to s. 4 (*a*) of the Licensing Act, 1921. The permitted hours for supply at the club of intoxicating liquors on Sundays, Christmas Day and Good Friday were fixed by a rule of the committee of the club at five hours: from 12 noon to 1.30 p.m., from 2 p.m. to 2.30 p.m., and from 4.30 p.m. to 7.30 p.m. That rule had been duly registered by the clerk to the justices and was in force on the date of the supply charged in the information. The supply charged was to members on the club premises at 5 p.m. on Sunday, the 3rd August, 1930. The respondent contended that a supply at 5 p.m. could not be authorised by the committee of the club, and constituted an offence under s. 4 (*a*) of the Licensing Act, 1921, s. 2 of which provided that of the five hours during which intoxicating liquor could be sold or supplied on Sundays, Christmas Day and Good Friday, two should be between 12 (noon) and three in the afternoon, and not more than three between 6 and 10 in the evening. The justices were of opinion that the second period of permitted hours on Sundays could not be fixed for a club to begin earlier than 6 p.m., and they convicted the appellants and fined them £1 each.

AVORY, J., said that he thought that there were two periods in which sale was permitted, one between 12 and 3, and the other between 6 and 10, and that the sale or supply of liquor at any hour not within those periods was an infringement of the Act. The whole discretion of the licensing justices and the committee was governed by the words "subject to the foregoing provisions" in the Act, and in his opinion the justices were right and the appeal should be dismissed.

SWIFT and CHARLES, JJ., agreed.

COUNSEL: *T. Hynes*, for the appellants; *F. D. Levy*, for the respondent.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *John H. Goold*, Chelmsford; *Regge & Ackroyd*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Banco de Portugal *v.* Waterlow & Sons, Limited.

Wright, J. 22nd December, 1930.

CONTRACT—PRINTING OF BANK NOTES—UNAUTHORISED ISSUE—PRINTER VICTIMISED BY FRAUD—ISSUING BANK'S LOSS—CLAIM FOR BREACH OF CONTRACT.

In this action the Banco de Portugal, bankers to the Portuguese Government, claimed £1,100,281 damages for alleged breach of contract, negligence, or conversion from Waterlow & Sons, Limited. In 1922 the plaintiffs entered into certain contracts with the defendants for the printing and supply of Portuguese bank notes. One of the terms of those contracts, the plaintiffs alleged, was that the defendants should take all necessary precautions to prevent forgery of the notes, and that they should not print notes from the same plates except on the express authority of the bank. It was now alleged by the bank that in breach of the contracts, or negligently and in breach of duty, the defendants printed, in 1925, a quantity of 500 escudos (about £5) bank notes of the Vasco da Gama issue from plates made to the bank's specification, and delivered them to an unauthorised person. The latter was a Dutchman called Marang, who had used forged documents of introduction to the defendants and had negotiated the business with them, and whose associates had formed a bank in Portugal to enable the notes to be put into circulation. The plaintiffs alleged that they were forced to withdraw the notes of the Vasco da Gama issue from circulation and to honour all that were presented, thus suffering considerable loss. The defendants denied that they had been guilty of any breach of contract, breach of duty, or negligence, and further pleaded contributory negligence.

After a hearing which lasted twenty-one days, WRIGHT, J., said that the action arose out of a most elaborate fraud which, he supposed, was unparalleled in the history of commercial swindles. The conspirators were successful, by a series of ingenious tricks, in obtaining delivery from the defendants of 580,000 notes. As a result the plaintiff bank had paid out good notes which were equivalent to about £1,000,000 sterling. As a set-off against that, the bank had the benefit of realisations amounting to nearly half of that £1,000,000 from the proceeds of the fraud which had been seized. The first question to be dealt with was whether the defendants were liable in law for the consequences of what they had done with the best of intentions, namely, the printing and delivering of the notes to Marang, without the authority of the plaintiff bank. The claim, in the forefront, was based on breach of contract. It was contended that the defendants were under an absolute duty not to print or deliver Bank of Portugal notes without the authority of the bank, and that, alternatively, failing an absolute duty, they were bound to take all reasonable care to avoid such acts. In his view it was of the essence of a contract like the one in question that the printers of bank notes were left in possession of the plates on condition that there was not to be any use of the plates for any purpose other than that of the bank which issued the notes. Such a term was necessary to give effect to such business efficacy as the parties contemplated. He therefore held that the duty of the defendants was absolute, and was bound to say that his conclusion was that the defendant company, by its directors, had fallen short of that standard of care and understanding which the very special nature of the business required. It was no reflection on a great company that in particular circumstances they had fallen into an unusually ingenious trap. His lordship also held that the defence of contributory negligence had not been made out. With regard to damage, he thought, bearing all the circumstances in mind, that the plaintiff bank took the only course it could in withdrawing the Vasco da Gama issue when it did. The defendants' argument that the plaintiff bank in honouring the notes had merely exchanged paper for paper, the regime of convertibility not then being in force, was a fundamental point of the defence and called for careful consideration; he did not feel able, however, to accept that contention. Taking into consideration sums already received by the plaintiffs, he thought that there should be judgment for the plaintiffs for the balance, namely, £531,851, with costs. The entering of judgment was postponed in order that counsel might argue with regard to the exact figure.

JUDGMENT: 12th January.

After hearing argument in the above case with regard to the exact measure of damages to be awarded to the plaintiffs, his lordship entered judgment for them for £569,421, with costs. A stay of execution was granted for fourteen days, pending notice of appeal.

COUNSEL: *Stuart Bevan*, K.C., *Le Quesne*, K.C., *D. B. Somervell*, K.C., and *H. L. Parker*, for the plaintiffs; *Norman Birkett*, K.C., *H. Bensley Wells* and *Theodore Turner*, for the defendants.

SOLICITORS: *Travers-Smith, Braithwaite & Co.; Johnson, Jecks & Colclough*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

Law Students' Debating Society.

The quarterly meeting of the Society was held at The Law Society's Hall, on Tuesday, 6th January, 1931 (Chairman, Mr. W. S. Jones), when the Treasurer and Secretaries presented their reports. From the Secretaries' report it appeared that during the preceding quarter ten meetings had been held. The average attendance had been sixteen members and six visitors. Twenty-four new members had been elected (a record for post-war years) and four members had resigned. After the reports had been adopted Mr. C. F. S. Spurrell took the chair, and a debate took place upon the motion "That the case of *Lawrence* v. *George Matthews* (1924) *Limited* [1929] 1 K.B.1; 140 L.T.R. 25, was wrongly decided." Mr. A. L. Bostock opened in the affirmative. Mr. C. N. Bushell opened

in the negative. Mr. T. L. Harris seconded in the affirmative. Mr. N. F. Henle seconded in the negative. The following members also spoke: Messrs. W. M. Pleadwell, N. F. Burge and J. C. Christian-Edwards. The opener having replied, and the Chairman having summed up, the motion was lost by two votes. There were fifteen members and three visitors present.

At a meeting of the Society held at The Law Society's Hall on Tuesday, 13th January, 1931 (chairman, Mr. C. C. Ross), the subject for debate was "That this house is in favour of the legalisation of lotteries held for charitable purposes." Mr. E. Vernon Miles opened in the affirmative. Mr. V. Foden-Pattinson opened in the negative. The following members also spoke: Messrs. Gerald Thesiger, T. M. Jessup, R. L. Mitchell, H. J. Baxter, C. F. S. Spurrell, J. C. Christian-Edwards, L. J. Frost, M. C. Batten, W. M. Pleadwell, I. T. Smith, D. Boult, Miss K. E. Chambers, Miss Joan O'Connor, Messrs. L. J. Malony (visitor), P. H. Blackman, C. Israel and W. J. Bretherton. The opener having replied the motion was lost by four votes. There were twenty-two members and five visitors present.

An Entrance Scholarship at Gray's Inn (£100 a year for three years) has been awarded to Mr. Robert Kenneth Tinkler, of Balliol College, Oxford, a student of the Society.

A Lord Justice Holker Junior Scholarship (£100 a year for three years) has been awarded to Mr. John Megaw, of St. John's College, Cambridge, a student of the Society.

Solicitors' Benevolent Association.

The monthly meeting of the board of directors was held at 60, Carey-street on the 14th January, Mr. W. A. Coleman (Leamington) in the chair. The other directors present were: Sir A. N. Hill, Bart., Sir E. F. Knapp-Fisher, Sir R. W. Poole, and Messrs. E. E. Bird, A. C. Borlase (Brighton), A. Bullin (Portsmouth), T. G. Cowan, T. S. Curtis, A. G. Gibson, O. J. Humbert, C. G. May, H. A. H. Newington, F. J. Skelton (Manchester) and M. A. Tweedie.

The sum of £2,080 was distributed in grants of relief; nineteen new members were admitted, and other general business transacted.

Rules and Orders.

THE POOR PRISONERS' (COUNSEL AND SOLICITOR) RULES, 1930, DATED DECEMBER 17TH, 1930, MADE BY THE ATTORNEY-GENERAL, WITH THE APPROVAL OF THE LORD CHANCELLOR AND THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, IN PURSUANCE OF SECTION 4 OF THE POOR PRISONERS' DEFENCE ACT, 1930 (20 & 21 GEO. 5, C. 32).

1. Every Clerk of Assize and Clerk of the Peace shall keep a list of solicitors who are willing to undertake the defence of poor prisoners, and shall insert in such list the names of all solicitors who are willing so to act. The name of any solicitor shall be removed from the list, either on the application of the solicitor himself or by direction of any Judge or Chairman of Quarter Sessions. A copy of such list shall be sent to every Clerk to Justices in the county or quarter sessions district.

2. Every Clerk of Assize and Clerk of the Peace shall keep a list of the members of the Bar attending the circuit or sessions who are willing to appear as counsel for poor prisoners, and shall insert in such list the names of all such members of the Bar who are willing so to appear. A copy of such list kept by a Clerk of Assize shall be sent to every Clerk to Justices in the county.

3. The Clerk of Assize, Clerk of the Peace, or Clerk to Justices acting for any Certifying Authority, Court of Summary Jurisdiction or Examining Justices shall keep a list of all cases in which application is made to them for a defence certificate or legal aid certificate or in which such a certificate is offered by them and all cases in which an order is made under sub-section (3) of section 3 of the Poor Prisoners' Defence Act, 1930,(*) and shall record therein (*a*) the name of the prisoner, (*b*) in general terms the charge or charges preferred, (*c*) the date and the result of such application or offer, and (*d*) in the case of a Clerk to Justices, whether the application relates to the prisoner's defence before the Justices or before the Court to which he is committed for trial; and every such Clerk shall send a copy of such list to the Secretary of State for the Home Department at such times as the Secretary of State may from time to time direct.

4.—(1) Any defence certificate granted by Committing Justices in pursuance of section 1 of the Poor Prisoners' Defence Act, 1930,(*) shall be in Form A(i) or A(ii) in the Schedule hereto; and the certificate shall as soon as it has been granted be sent by the Clerk to the Justices to the Clerk of Assize or Clerk of the Peace, together with the name of the solicitor assigned.

(2) Any defence certificate granted by a Judge or a Chairman of Quarter Sessions shall be in Form B(i) or B(ii) in the Schedule hereto.

(3) Where the charge is one of murder or the case appears to present exceptional difficulty, a Certifying Authority in granting a defence certificate may certify that in its opinion the interests of justice require that the prisoner shall have the assistance of two counsel.

5. Any legal aid certificate granted by a Court of Summary Jurisdiction or Examining Justices in pursuance of section 2 of the said Act shall be in Form C in the Schedule hereto. If the prisoner is committed for trial, the certificate shall be forwarded with the depositions to the Clerk of Assize or Clerk of the Peace together with the name of the solicitor and counsel (if any) who has acted or appeared.

6.—(1) Any Justices, Judge, or Chairman of Quarter Sessions, who grants any such certificate as aforesaid shall at the same time, after taking into consideration any representations which the prisoner may make, assign to him from the list kept under Rule 1 a solicitor to whose services the prisoner shall be entitled.

(2) Whenever a defence certificate is granted, a copy of the depositions shall be furnished to the solicitor so assigned by the Justices' Clerk, Clerk of Assize, or Clerk of the Peace, as the case may be.

7. Subject as hereinafter provided, any member of the Bar whose name appears upon the list kept under Rule 2 may be instructed on behalf of the prisoner by the solicitor so assigned and in any case where a Certifying Authority has certified in pursuance of Rule 4 (3) that in its opinion the interests of justice require that the prisoner shall have the assistance of two counsel, two such members of the Bar may be so instructed:

Provided that no member of the Bar being one of His Majesty's Counsel shall be so instructed unless the Certifying Authority has certified that in its opinion the interests of justice require that the prisoner shall have the assistance of two counsel.

8.—(1) These Rules may be cited as the Poor Prisoners' (Counsel and Solicitor) Rules, 1930.

(2) The Poor Prisoners' (Counsel and Solicitor) Rules, 1927,(†) are hereby revoked.

In pursuance of section 2 of the Rules Publication Act, 1893,(‡) I hereby certify that on account of urgency these Rules should come into operation on the 1st January, 1931, and I hereby make these Rules to come into operation on that day as Provisional Rules.

William A. Jowitt.
Attorney-General.

Law Officers' Department.
17th December, 1930.

Approved. *Sankey, C.*
J. R. Clynes.

SCHEDULE.

FORM A(i).—DEFENCE CERTIFICATE OF COMMITTING JUSTICES IN CASES OF MURDER.

We [*or* I] the Committing Justice[s] in the case of having committed him for trial on a charge of murder and being satisfied that his means are insufficient to enable him to obtain legal aid in the preparation and conduct of his defence at the trial, do hereby grant in respect of him this defence certificate.

[*And we* [*or I*] *do further certify that in our* [*or my*] *opinion the interests of justice require that he shall have the assistance of two counsel.*]

Dated this day of , one thousand nine hundred and .

A. B.
C. D.
Justice[s] of the Peace for the County [*or* Borough] of

NOTE.—The prisoner has been committed to Prison.

FORM A(ii).—DEFENCE CERTIFICATE OF COMMITTING JUSTICES IN CASES OTHER THAN MURDER.

We [*or* I] the Committing Justice[s] in the case of , having regard to all the circumstances of the case (including the nature of the defence, if any, set up by him), are [*or* am] satisfied that it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence at the trial, and that his means are insufficient to enable him to obtain such aid, and we [*or* I] do hereby grant in respect of him this defence certificate.

*20 & 21 Geo. 5, c. 32.

†S.R. & O. 1927 (No. 537), p. 321.
‡56 & 57 Vic. c. 66.

[*And we [or I] do further certify that in our [or my] opinion, by reason of the case appearing to present exceptional difficulty, the interests of justice require that he shall have the assistance of two counsel.*]

Dated this day of , one thousand nine hundred and .

A. B. ,
C. D. ,
Justice[s] of the Peace for the County [*or* Borough] of

NOTE.—The prisoner has been committed to Prison [*or* has been released on bail and may be communicated with at].

FORM B(i).—DEFENCE CERTIFICATE OF JUDGE IN CASES OF MURDER.

I, A. B. , having regard to the fact that is committed for trial on a charge of murder and being satisfied that his means are insufficient to enable him to obtain legal aid in the preparation and conduct of his defence at the trial, do hereby grant in respect of him this defence certificate.

[*And I do further certify that in my opinion the interests of justice require that he shall have the assistance of two counsel.*]

Dated this day of , one thousand nine hundred and .

A. B. ,
One of His Majesty's Justices of the High Court.

FORM B(ii).—DEFENCE CERTIFICATE OF JUDGE OR CHAIRMAN IN CASES OTHER THAN MURDER.

I, A. B. , having regard to all the circumstances of the case (including the nature of the defence, if any, set up by) am satisfied that it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence at the trial, and that his means are insufficient to enable him to obtain such aid, and I do hereby grant in respect of him this defence certificate.

[*And I do further certify that in my opinion, by reason of the case appearing to present exceptional difficulty, the interests of justice require that he shall have the assistance of two counsel.*]

Dated this day of , one thousand nine hundred and .

A. B. ,
One of His Majesty's Justice of the High Court, *or*
Chairman (*or* Deputy *or* Acting Chairman) of Quarter Sessions, *or*
Recorder (*or* Deputy Recorder) of

FORM C.—LEGAL AID CERTIFICATE BY JUSTICES.

We [*or* I]*, being [a] Justice[s] of the Peace before whom is charged with
are [*or* am] satisfied that his means are insufficient to enable him to obtain legal aid and that by reason of the gravity of the charge [*or* of exceptional circumstances] it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence before us [*or* me], do hereby grant in respect of him this legal aid certificate.†

Dated this day of , one thousand nine hundred and .

A. B. ,
C. D. ,
Justice[s] of the Peace for the County [*or* Borough] of

* NOTE.—The certificate should be given by two Justices in a case dealt with summarily.

† NOTE.—When the prisoner is charged with murder *and the Justices think fit*, add "and direct that he be entitled to have counsel assigned to him as well as a solicitor for that purpose."

THE COSTS IN CRIMINAL CASES REGULATIONS, 1930, DATED DECEMBER 18, 1930, MADE BY THE SECRETARY OF STATE IN PURSUANCE OF SECTION 5 OF THE COSTS IN CRIMINAL CASES ACT, 1908 (8 EDW. 7. C. 15).

In pursuance of the power vested in me by section 5 of the Costs in Criminal Cases Act, 1908,(*) I hereby make the following regulations:—

1. Where a legal aid certificate has been granted in pursuance of section 2 of the Poor Prisoners' Defence Act, 1930,(†) in respect of any prisoner, Forms E and F in the Schedule hereto, or forms to the like effect, shall be used by Examining Justices and Courts of Summary Jurisdiction for the purposes of section 3 of the Costs in Criminal Cases Act, 1908.(*)

2.—(1) These Regulations may be cited as the Costs in Criminal Cases Regulations, 1930.

(2) These Regulations shall be construed as one with the Regulations dated the 28th November, 1908,(‡) made in pursuance of section 5 of the Costs in Criminal Cases Act, 1908,(*) and shall come into force on the 1st January, 1931.

Given under my hand at Whitehall this 18th day of December, 1930.

J. R. Clynes.
One of His Majesty's Principal Secretaries of State.

SCHEDULE.

FORM E.

Certificate of Examining Justices as to Costs of Legal Aid, in a case dealt with under the Indictable Offences Act, 1848.

In the [County of Petty Sessional Division of].

A.B. having been examined before on a charge of and committed for trial at Assizes [*or* at Quarter Sessions] [*or* which charge has been dismissed]: it is hereby certified that a legal aid certificate was granted in respect of the prisoner on the , [that the Examining Justices therein directed that the prisoner should be entitled to have counsel assigned to him as well as a solicitor] and that the under-mentioned amounts are due—

To C.D. of being the solicitor assigned to the prisoner.

	£
For fees	
addition of 33⅓ per centum	
travelling expenses of himself (see particulars annexed)	
travelling expenses of his clerk (see particulars annexed)	
out of pocket expenses (see particulars annexed)	
	£

To E.F. of counsel of

	£
For fees	
additional fees in respect of his having attended from a distance exceeding 20 miles measured in a straight line ..	
	£

and it is further certified that the said solicitor attended the hearing of the case on day(s), namely [and that the said counsel attended the hearing of the case on day(s), namely] and that none of such hearings related only to an application for an adjournment or remand or as to bail.

Dated this day of one thousand nine hundred and .

J.P.
Justice of the Peace for the [County] aforesaid.

N.B.—This certificate is to be forwarded by the Justices' Clerk, if the person charged is committed for trial, to the Clerk of Assize or the Clerk of the Peace before the next Court of Assize or Quarter Sessions or, if the charge is dismissed, with the legal aid certificate to the Clerk of the Peace before the next Court of Quarter Sessions.

No fee is payable to counsel under a legal aid certificate except in a case of murder, where the Justices direct that the prisoner be entitled to have counsel assigned to him as well as a solicitor.

FORM F.

Certificate of Court of Summary Jurisdiction as to Costs of Legal Aid in the case of an indictable offence dealt with summarily or of a summary offence.

In the [County of Petty Sessional Division of].

Before the Court of Summary Jurisdiction sitting at A.B. having been charged for that he did [*state substance of offence*] and the above Court having convicted the said prisoner [*or* dismissed the said charge]: it is hereby certified that a legal aid certificate was granted in respect of the said prisoner on the and that the undermentioned amounts are due to C.D. of being the solicitor assigned to him, namely

	£
For fees	
addition of 33⅓ per centum	
travelling expenses of himself (see particulars annexed)	

* 8 Edw. 7, c. 15. † 20 & 21 Geo. 5, c. 32.

‡ S.R. & O. 1908 (No. 1001) p. 234.

travelling expenses of his clerk (see particulars annexed) .. .. ..
out of pocket expenses (see particulars annexed) .. ..

£

And it is further certified that the said solicitor attended the hearing of the case on day(s), namely and that none of such hearings related only to an application for an adjournment or remand or as to bail.

Dated this day of , one thousand nine hundred and

J.P.

Justice of the Peace for the [County] aforesaid.

N.B.—This certificate is to be forwarded with the legal aid certificate by the Justices' Clerk to the Clerk of the Peace before the next Court of Quarter Sessions.

Legal Notes and News.

Professional Announcements.

(2s. per line.)

The partnership between CHARLES FREDERICK MONK and RALPH CYRIL YATES, practising as Brooks, Monk & Hargreave at 37, Waterloo-street, Birmingham, expired by effluxion of time on 31st December, 1930. Charles Frederick Monk will continue to practise at 37, Waterloo-street, Birmingham as BROOKS, MONK & HARGREAVE, and Ralph Cyril Yates will practice at 71, Temple-row, Birmingham as YATES & Co.

LIVERPOOL SOCIETY OF INCORPORATED ACCOUNTANTS.

Mr. Bertram B. Benas, B.A., LL.B., Barrister-at-law, delivered the first of the legal lectures of the session of the Liverpool Society of Incorporated Accountants, his subject being "The Law and Practice relating to the Amalgamation of Companies."

AUSTRALIAN MUTUAL PROVIDENT SOCIETY.

The Manager of London Branch of the Australian Mutual Provident Society reports having received a cable from its Head Office, Sydney, advising that the new business for the year ended 31st December, 1930, was £10,651,440 in the Ordinary Department and £3,300,683 in the Industrial Department, a total of £13,952,123. These remarkable figures almost invite the suggestion that either the condition of affairs prevailing in Australia during the year has been exaggerated or that the influence of this great office is such that nothing can hinder its progress and development.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Witness. Part I.	MR. JUSTICE MAUGHAM. Non-Witness
M'nd'y Feb. 2	Mr. Ritchie	Mr. Hicks Beach	Mr. Hicks Beach	Mr. More
Tuesday .. 3	Andrews	Blaker	*Andrews	Hicks Beach
Wednesday 4	Jolly	More	More	Andrews
Thursday . 5	Hicks Beach	Ritchie	*Hicks Beach	More
Friday 6	Blaker	Andrews	Andrews	Hicks Beach
Saturday .. 7	More	Jolly	More	Andrews

DATE	GROUP I. MR. JUSTICE BENNETT. Witness. Part II.	MR. JUSTICE CLAUSON. Non-Witness.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part II.	MR. JUSTICE FARWELL. Witness. Part I.
M'nd'y Feb. 2	Mr.*Andrews	Mr. Jolly	Mr.*Blaker	Mr.*Ritchie
Tuesday .. 3	*More	Ritchie	*Jolly	Blaker
Wednesday 4	*Hcks Beach	Baker	*Ritchie	*Jolly
Thursday . 5	Andrews	Jolly	Blaker	Ritchie
Friday 6	*More	Ritchie	Jolly	*Blaker
Saturday .. 7	Hicks Beach	Blaker	Ritchie	Jolly

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The EASTER VACATION will commence on Friday, the 3rd day of April, 1931, and terminate on Tuesday, the 7th day of April, 1931, inclusive.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (1st May 1930) 3%. Next London Stock Exchange Settlement Thursday, 5th February, 1931.

	Middle Price 28 Jan. 1931.	Flat Interest Yield.	Approximate Yield with redemption
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	91½	4 7 5	—
Consols 2½%	58	4 6 2	—
War Loan 5% 1929-47	103¾	4 16 5	—
War Loan 4½% 1925-45	102	4 8 3	4 6 3
War Loan 4% (Tax free) 1929-42	Redeemed		
Funding 4% Loan 1960-90	95	4 4 3	4 4 6
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	97	4 2 6	4 3 3
Conversion 5% Loan 1944-64	106¼	4 14 1	4 12 9
Conversion 4½% Loan 1940-44	101½	4 8 8	4 7 0
Conversion 3½% Loan 1961	81¾	4 5 8	—
Local Loans 3% Stock 1912 or after	68	4 8 3	—
Bank Stock	268½	4 9 5	—
India 4½% 1950-55	85	5 5 11	5 12 6
India 3½%	62	5 12 11	—
India 3%	52½	5 14 3	—
Sudan 4½% 1939-73	99	4 10 11	4 11 0
Sudan 4% 1974	91	4 7 11	4 9 4
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	86½	3 9 4	3 18 0
Colonial Securities.			
Canada 3% 1938	91	3 5 11	4 8 6
Cape of Good Hope 4% 1916-36	97	4 2 6	4 11 6
Cape of Good Hope 3½% 1929-49	85	4 2 4	4 14 6
Ceylon 5% 1960-70	102	4 18 0	4 17 6
*Commonwealth of Australia 5% 1945-75	75	6 13 4	7 4 9
Gold Coast 4½% 1956	98	4 11 10	4 12 6
Jamaica 4½% 1941-71	98	4 11 10	4 12 0
Natal 4% 1937	97	4 2 6	4 11 9
*New South Wales 4½% 1935-1945	65	6 18 6	8 2 6
*New South Wales 5% 1945-65	65	7 13 10	7 16 0
New Zealand 4½% 1945	93½	4 16 3	5 2 6
New Zealand 5% 1946	99½	5 0 6	5 1 0
Nigeria 5% 1950-60	103	4 17 1	4 16 6
*Queensland 5% 1940-60	67	7 9 3	7 15 0
South Africa 5% 1945-75	102	4 18 0	4 17 6
*South Australia 5% 1945-75	70	7 2 10	7 5 0
*Tasmania 5% 1945-75	75	6 13 4	6 15 0
*Victoria 5% 1945-75	67	7 9 3	7 13 6
*West Australia 5% 1945-75	72	6 18 11	7 0 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	67	4 9 7	—
Birmingham 5% 1946-56	106	4 14 4	4 12 0
Cardiff 5% 1945-65	102	4 18 0	4 17 6
Croydon 3% 1940-60	76	3 18 11	4 9 6
Hastings 5% 1947-67	105	4 15 3	4 14 3
Hull 3½% 1925-55	82	4 5 4	4 14 9
Liverpool 3½% Redeemable by agreement with holders or by purchase	78	4 13 4	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	57	4 7 9	—
London City 3% Consolidated Stock after 1920 at option of Corporation	68	4 8 3	—
Metropolitan Water Board 3% "A" 1963-2003	69	4 6 11	—
Do. do. 3% "B" 1934-2003	71	4 4 6	—
Middlesex C.C. 3½% 1927-47	86	4 1 5	4 14 6
Newcastle 3½% Irredeemable	76	4 12 1	—
Nottingham 3% Irredeemable	66	4 10 11	—
Stockton 5% 1946-66	102	4 18 0	4 17 6
Wolverhampton 5% 1946-56	105	4 15 3	4 13 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	84½	4 14 8	—
Gt. Western Railway 5% Rent Charge	101	4 19 0	—
Gt. Western Rly. 5% Preference	95	5 5 3	—
L. & N.E. Rly. 4% Debenture	76	5 5 3	—
L. & N.E. Rly. 4% 1st Guaranteed	74½	5 7 5	—
L. & N.E. Rly. 4% 1st Preference	53	7 10 11	—
L. Mid. & Scot. Rly. 4% Debenture	81½	4 18 2	—
L. Mid. & Scot. Rly. 4% Guaranteed	78	5 2 7	—
L. Mid. & Scot. Rly. 4% Preference	60	6 13 4	—
Southern Railway 4% Debenture	83	4 16 5	—
Southern Railway 5% Guaranteed	101	4 19 0	—
Southern Railway 5% Preference	92	5 8 8	—

*The prices of Australian stocks are nominal—dealings being now usually a matter of negotiation.